1869.

# SUPREME COURT OF THE UNITED STATES.

## No. 116.

FARISH CARTER, PLAINTIFF IN ERROR,

vs.

ARCHIBALD T. BENNETT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

INDEX.


| | Original. | Print. |
|---|---|---|
| Transcript of record of proceedings in circuit court | 1 | 1 |
| Notice of appeal to supreme court of Florida | 204 | 203 |
| Citation | 205 | 204 |
| Assignment of errors | 206 | 204 |
| Citation and service | 209 | 207 |
| Proceedings in supreme court | 209 | 207 |
| Order of court | 216 | 210 |
| Judgment of supreme court | 218 | 211 |
| Copy of writ of error | 220 | 212 |
| Bond to prosecute writ | 221 | 213 |
| Power of attorney from F. Carter | 225 | 215 |
| Clerk's certificate | 229 | 217 |
| Writ of error | 230 | 217 |
| Citation and service | 231 | 218 |


Gideon, printer.

Pleas before the honorable the supreme court of the State of Florida, at the Capitol, in the city of Tallahassee, on the twenty-sixth day of December, A. D. 1852.

Be it remembered, that heretofore, to wit, on the sixth day of December, A. D. 1849, Farish Carter, appellant, by his attorney, filed in the clerk's office of said supreme court a transcript of the record of the proceedings and judgment, in an action at law, lately depending in the circuit court of the western circuit of Florida, in and for the county of Franklin, wherein Archibald T. Bennett was plaintiff and Farish Carter defendant. And also an assignment of errors in said supreme court, which said transcript and assignment of errors are in the words and figures following, to wit:

CARTER vs. BENNETT. } No. 13.

Supreme court of the State of Florida, January term, 1850.

Pleas held before the honorable Thomas Douglas, judge of the eastern circuit of the State of Florida, presiding in the western circuit, and holding court for the honorable George S. Hawkins, judge, &c., at a regular term of said circuit court for the county of Franklin, began, continued, and held in the city of Appalachicola, on Saturday, the twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-third year.

Be it remembered, that heretofore, to wit, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and forty-two, Archibald T. Bennett, by his attorney, Thomas Baltzell, esq., filed in the office of the clerk of this court a certain memorandum or præcipe in writing, in the words and figures following, to wit:

ARCHIBALD T. BENNETT vs. FARISH CARTER. } Action of trover.

To damage of plaintiff, $20,000.
Issue writ.

THOMAS BALTZELL,
*Plaintiff's attorney.*

December 15, 1842.

And thereupon a writ or summons was issued, (which said writ or summons is lost or mislaid.)

Afterwards, to wit, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and forty-three, the plaintiff, by his attorneys, James D. Westcott, Thomas Baltzell, and Albert G. Semmes, esq'rs., filed in the office of the clerk of this court his declaration in the words and figures following, to wit:

Franklin superior court, spring term, 1843. Franklin county.

Farish Carter was summoned to answer Archibald T. Bennett, in a plea of trespass on the case in trover, &c. Whereupon the said plaintiff, by attorney, complains of said defendant, for that whereas the said plaintiff, on the said first day of December, in the year 1842, in the county aforesaid, was possessed of certain negro slaves, to wit: Rica, a black boy, 17 years old; Tom, a black boy, 18 years old; Charles, a man, 35 or 40 years old; Elias, a yellow boy, 20 years old; Pink, or Gincey, a yellow woman, 22 years old; Pink's two children, Charles and Henry; Dinah, a black woman, 35 years old; Amarilla, a yellow girl, 5 or 6 years old; Fanny, a yellow girl, 3 or 4 years old; Emeline, a yellow girl, 2 years old; Antoinette, a yellow girl, 7 or 8 years old; Clarissa, a black girl, 14 years old; Nancy and child, a woman, 35 years old; Ellen, a girl, 10 or 11 years old; Sam, a black man, 30 years old; Jeffa, a black man, 35 or 40 years old; Isaac, a black man, 20 years old; Allen, a black man, 29 years old; old Cato, a black man, 35 or 40 years old; John, a yellow man, 40 years old; Joe, a black man, 20 years old; Amos, a yellow man, 28 or 30 years old; Patsy and child, a dark woman, 28 years old; Sally, a black woman, 40 years old; Andrew, a black boy, 11 years old; Albert, a yellow man, 20 years old, and Irene, a yellow girl, 13 years old, of large price, to wit, of the price of twenty thousand dollars, of plaintiff's own proper goods and chattels; and being so possessed thereof, he, the said plaintiff, afterwards, to wit, on the same day and year aforesaid, in the county aforesaid, casually lost the said negroes out of his hands and possession; which said negroes afterwards, to wit, on the same day and year aforesaid, in the county aforesaid, came to the possession of said defendants by finding. Yet the said defendant, well knowing the same to be the goods and chattels of said plaintiff, hath not, although often requested, delivered the same to said plaintiff. But afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, converted and disposed of the said negroes to his own use, to the damage of said plaintiff twenty thousand dollars. Wherefore he brings suit, &c.

BALTZELL,
WESTCOTT, and
SEMMES,
*Plaintiff's attorneys.*

Afterwards the defendant, by his attorney, William H. Brockenbrough, filed the following plea, to wit:

Defendant, by his attorney, Brockenbrough, comes and defends the wrong and injury when, &c., and says that he is not guilty in manner and form as plaintiff hath in his declaration alleged, and of this he puts himself upon the country, and plaintiff doth the like.

BROCKENBROUGH.

Afterwards, to wit, on the twentieth day of December, one thousand eight hundred and forty-three, the following order was made in this case, viz:

Ordered, that this suit be continued.

Afterwards, to wit, on the eighth day of May, one thousand eight hundred and forty-four, the following order was made in this case, viz:

Ordered, that this case be continued.

Afterwards, to wit, on the eleventh day of December, one thousand eight hundred and forty-four, the following order was made in this case, viz:

Ordered, that this case be continued.

Afterwards, to wit, on the seventeenth day of February, one thousand eight hundred and forty-five, the following order was made in this case, viz:

Ordered, that this case be continued, by consent of counsel, until next term.

Afterwards, to wit, on the sixteenth day of December, one thousand eight hundred and forty-five, the following order was made in this case, viz:

Ordered, that this case be continued.

Afterwards, to wit, on the fifteenth day of April, one thousand eight hundred and forty-six, the following order was made in this case, viz:

Ordered, that this cause be continued.

Afterwards, to wit, on the thirty-first day of December, one thousand eight hundred and forty-six, came the parties by their attorneys; and the attorney for plaintiff moved the court to rule out the deposition of Reuben J. Thornton, and after argument thereof, the court not being sufficiently advised in the premises, takes time to consider, and this case is continued until the adjourned session.

[Memo.]—The court adjourned until the third Monday in February, 1847, and Judge Macrae not returning, there was no adjourned session held.]

[Memo.—In consequence of the absence of Judge Hawkins, there was no Spring term held in the year 1847.]

Afterwards, to wit, on the thirteenth day of December, one thousand eight hundred and forty-seven, the following order was made, viz:

Ordered, that this cause be continued.

Afterwards, to wit, on the tenth day of April, one thousand eight hundred and forty-eight, the following order was made, viz:

Ordered, that this case be continued until the next term.

Afterwards, to wit, on the fourteenth day of December, one thou-

sand eight hundred and forty-eight, came the parties by their attorneys, and thereupon came a jury, to wit: Oliver Crawford, William Foster, Patrick Gready, Milton N. Scott, James P. Penn, Jeremiah Gready, Casper Horn, Walter Thompson, Patrick McGreany, James L. Barbor, William Worickes, and Thomas Orman, who being elected, tried, and sworn well and truly to try the issue joined, after having heard a part of the evidence, by consent of the parties, and with the assent of the court, were adjourned until nine o'clock to-morrow morning.

Afterwards, to wit, on the fifteenth day of December, in the year last aforesaid, came the parties by their attorneys, and the jury sworn to try the issue in this cause appeared in court, according to their adjournment, and having further heard the evidence, by consent of the parties, and with the assent of the court, were again adjourned until to-morrow morning, nine o'clock.

Afterwards, to wit, on the sixteenth day of December, in the year last aforesaid, came the parties by their attorneys, and the jury sworn to try the issue in this cause appeared in court according to their adjournment, and having fully heard the evidence, by consent of the parties, and with the assent of the court, were again adjourned till Wednesday morning next, nine o'clock.

Afterwards, to wit, on Wednesday, the twentieth day of December, in the year last aforesaid, came the parties by their attorneys, and the jury sworn to try the issue in this cause, appeared in court according to their adjournment, and having heard the argument of counsel, by consent of the parties, and with the assent of the court, were again adjourned until to-morrow morning, nine o'clock.

Afterwards, to wit, on the twenty-first day of December, in the year last aforesaid, came the parties by their attorneys, and the jury sworn to try the issue in this cause appeared in court according to their adjournment, and after hearing the instructions of the court, retired to consult of their verdict, and after some time returned into court, and asked to be permitted to have some refreshments; and thereupon, by consent of the parties by their attorneys, and with the assent of the court, they were permitted to go under the charge of a bailiff to get their dinners by themselves, and to return to the consideration of their verdict, without being formally called by the court; and thereupon, after some time, they again returned into court, and upon their oath do say, they find for the plaintiff and assess his damages at the sum of twenty-three thousand eight hundred and eighty-four dollars and sixty-six cents. And thereupon, the said plaintiff, in proper person, came and remitted and relinquished the sum of three thousand eight hundred and eighty-five dollars of said damages so found as aforesaid, and prays the judgment of the court for the balance.

And now at this day, to wit, the day and year herein first aforesaid, came the parties by their attorneys, and the court having heard the argument of counsel on the reasons assigned by the counsel for the defendant, in support of their motion for a new trial of said cause, and having fully considered the same, do order that said motion be denied

and overruled. Therefore, it is considered by the court, that the plaintiff do recover of the defendant his damages aforesaid in the sum of nineteen thousand nine hundred and ninety-nine dollars and sixty-six cents, in manner and form aforesaid, together with his costs by him about his suit in this behalf expended.

Afterwards, on the twenty-eighth day of December, one thousand eight hundred and forty-eight, the defendant, by his counsel, agreeably to leave granted him on the trial of this cause, tendered his bills of exceptions, which were received, signed, and sealed by the court, and ordered to be made a part of the record in this cause, and are in the words and figures following, to wit:

Be it remembered, that upon the trial of this cause, after the swearing of the jury, the plaintiff, by his counsel, Albert G. Semmes, read his declaration, and introduced the following bill of sale from Robert J. Floyd to A. T. Bennett, dated March 18th, 1842, in the following words and figures, to wit:

For value received, I do hereby assign, set over, transfer, and convey, unto A. T. Bennett the following negroes, to wit: Rica, Tom, Charles, Elias, Jeff, Isaac, Allen, Cato, John, Joe, Amy, Albert, Andrew, Pink, Charles and Henry, children of Pink, Dinah, Amarilla, Emeline, Fanny, Antoinett, Clarissa, Nancy, Ellen, Sam, Patsey, Henry, Sally, Irene, Jane, and Henry, and their increase, to him, his heirs and assigns, forever, without any recourse upon me or my heirs either in law or equity.

Dated March 18th, 1842. RO. J. FLOYD. [SEAL.]

Personally appeared before me, Wm. Valleau, clerk of the circuit court of Franklin county, R. J. Floyd, who acknowledged that he signed, sealed, and delivered the within bill of sale on the day and date stated, and for the purposes therein specified.

Given under my hand this 17th day of October, 1848.

WILLIAM VALLEAU, *Clerk*. [L. S.]

2. He next introduced and read the following depositions of R. J. Floyd and James F. Farrior.

Interrogatories to be propounded to Robert J. Floyd and James F. Farrior, material witnesses for plaintiff, &c.

Interrogatory 1st. (To both.) Do you know the parties?

Interrogatory 2. To Floyd. Did plaintiff and yourself purchase in 1841 or 1842, in Appalachicola, a number of negro slaves; if yea, who from?

Interrogatory 3. Did you know any of the negroes were sued for by the plaintiff in this action; if yea, were they or were they not a portion of the negroes purchased by you and plaintiff as above referred to? (If you answer that any were so purchased.)

Interrogatory 4. Did you, at any time after the above referred to purchase, sell your interest in them or any portion of these slaves to plaintiff; if yea, when and where? State their names, ages, sex, and

any other description you may recollect. Did you or not deliver possession of these slaves to plaintiff at the time of sale?

Interrogatory 5. Did or not plaintiff sell any of these negroes to James F. Farrior and Roberts, Allen & Co., sold by you to him, if any such sale? If yea, state when and which of the negroes. Do you know whether said Farrior and Roberts, Allen & Co., went in possession of the negroes plaintiff sold them? (If you answer that he sold any.)

Interrogatory 6. State the value of these negroes sold by you to plaintiff in 1842, (if any were sold.) What was their hire worth in Appalachicola?

Interrogatory 7. If you answer that you sold any negroes to plaintiff, what became of them; were they ever in the custody of the marshal; if yea, which marshal; from whose possession were they taken, and at whose instance and direction? State fully and particularly all you know that will be material for plaintiff.

Interrogatory 8. Did you and Reuben Thornton ever settle concerning these negroes? If yea, state fully and particularly every fact in regard to that settlement material for plaintiff.

Interrogatory 9. To Farrior. State fully and particularly all you know in relation to the foregoing.

A. G. SEMMES,
*Plaintiff's attorney.*

Further cross interrogatories to James F. Farrior.

1. How long have you known John Milligan?

2. From his general character for veracity, would you believe him upon oath?

3. Have you not heretofore discredited the oath of John Milligan?

4. To Floyd and Bennett. Have either of you any interest in the suit of A. T. Bennett vs. Carter, or Roberts, Allen & Co., vs. same?

R. J. MOSES and
J. C. SMITH,
*Plaintiff's attorneys.*

By virtue of a commission from the honorable the circuit court of Franklin county to us directed, we have caused R. J. Floyd and James F. Farrior, witnesses named in the annexed commission, to come before us, and after being duly sworn true answers to make to certain interrogatories, and they, after examination, answer and saith as follows, viz:

R. J. Floyd, witness named, saith to the first:

1st interrogatory. I know the plaintiff well, but have never been introduced to the defendant; have seen him.

2d interrogatory. In 1842 the plaintiff and myself purchased a number of negro slaves; the purchase was from one Reuben Thornton, since deceased, as witness is informed.

3d interrogatory. He knows some of the negroes, and knows they are negroes purchased by witness and plaintiff, and afterwards sued for

by defendant, under a mortgage to some bank in Georgia, and recovered by defendant, and sold by one Hez. Hawley, then marshal of the United States of the Appalachicola district, and purchased by one Richard Long at the sale.

4th interrogatory. The day after the purchase, plaintiff, Farrior, and witness had a division. Farrior became interested in the purchase, and witness sold all his right in the negroes, each got his share. It was done in the schooner Magnet at sea. Witness does not remember all the names, but knows that Irene, Patsey, and others, which by bill of sale are the same negroes sued for in this action, and on reference to said bill of sale finds they are the same negroes by name, and the same negroes were in the possession of the marshal, and sold by him as above. I delivered to plaintiff possession of the negroes, and he has my bill of sale for the same.

5th interrogatory. Witness does not know whether plaintiff sold to Farrior, or Roberts, Allen & Co., or not, but knows Roberts was in possession of one of the negro women and her child.

6th interrogatory. The value of the negroes sold to plaintiff was, according to the valuation upon said negroes, about seven thousand dollars. Witness does not know what the hire would have been worth, but for negro fellows he that year got from twenty to twenty-five dollars per month, and for women about ten dollars.

Interrogatory 7th. The negroes got by the plaintiff *was* recovered by one Farrish Carter, sold by the marshal, and purchased by one Richard Long, of Jackson county, taken from the possession of plaintiff, at the suit of Carter, assignee of some bank in Georgia.

Interrogatory 8th. I settled with Reuben Thornton for my part of purchase money. He told me that I should be released in full. The discharge was not signed by Carter, but with the understanding between me and Carter's attorney that the suits against me would be stopped, in case I paid Thornton, which I did. I had no conversation with Carter upon the subject; and having agreed to pay the amount of my purchase, in good faith, to Thornton, I did so. Thornton, at the time of sale, told me there was a mortgage upon certain land, and a portion of the negroes, for some nine thousand dollars. He gave me a list of negroes that he said was not mortgaged. The most of these negroes I got by his advice. After suit was commenced, I found that many of the negroes were mortgaged that he gave me a list of as not being mortgaged. The release from Thornton to me is of record in Franklin county.

R. J. FLOYD.

Sworn to before us, this 26th December, 1846.
E. D. TRACY, *Commissioner*.
HOPEWELL DORSEY, *Commissioner*.

R. J. Floyd, witness, answers and says: To the first cross interrogatory the witness answers and saith: That he remembers the negroes by

bill of sale from Thornton, and from having seen them in possession of the marshal, and having seen them sold by said marshal.

Cross interrogatory 2d. We purchased from one Thornton, and the negroes sued for in this case are only a part of said purchase. Farrier got a portion and witness got the remainder. Witness sold his part. He does not know what became of Farrier's after their shipment to Mobile.

Cross interrogatory 3d. The negroes were in hands of marshal, under attachment taken out, I think, by John Watson, esq., of Georgia.

Cross interrogatory 4th. There was, I think, seventy-six in all. The price was fourteen thousand dollars—one-half cash, and the balance on time. I have paid all I owed upon said notes. I don't know whether Bennett & Farrier have paid or not; but I have heard they have not paid. My release is of record in Franklin county.

Cross interrogatory 5th. I considered at the time that the price was low, and it was the reason of my becoming interested. I have answered in direct interrogatories as to all judgments, mortgage liens, that I heard of. The mortgage was held by a bank in Georgia, and was the only encumbrance I ever heard of. There was a written bill of sale, and is of record in Franklin county, where a copy may be obtained. Plaintiff is in possession of the original.

Cross interrogatory 6th. I was counsel of Jordan. I know of no nominal sale between any of the parties, and do not know whether plaintiff did or not.

Cross interrogatory 7th. An individual of the name of Harris was there.

Cross interrogatory 8th. He employed me and W. G. M. Davis as a firm, (he did.)

Interrogatory 9th. He returned in two or three days. Plaintiff went with him—I did not go—to make arrangements to replevy the negroes. He remained several days; the negroes were in jail, or in custody of marshal.

Interrogatory 10th. One R. Thornton returned as the owner of the slaves, and plaintiff, I think, in company. Thornton came to me and told me he owned the negroes. I do not remember whether plaintiff was present or not. Thornton did not tell me the sale was nominal; (I do not know.)

Interrogatory 11th. I do not remember my advice to either.

Interrogatory 12th. Thornton tried to replevy, so did several for him, but failed. I don't remember the marshall's reply, if I ever heard him.

Interrogatory 13th. My brother, as an acquaintance of Thornton, introduced him to several gentlemen, but further than that he never went, but declined to go on the bond himself. I, as attorney, may have gone with Thornton & Harris, but did not use any influence, further than (when asked) stated the true matter of fact in the case. The attorney who asks this question knows full well my brother's name was never offered, nor was it refused. I don't know that any

security was offered, nor what it was worth, nor do I know any was ever offered.

Interrogatory 14th. I have already stated, in the 13th cross interrogatory, my knowledge in the matter.

Interrogatory 15th. I purchased the negroes while in custody; the plaintiff and James F. Farrier was to be a party; but Farrier was not a party until after the purchase.

Interrogatory 16th. I and the others purchased and replevied the negroes, as you would replevy in other cases. It took us about ten minutes to give the bond, signed by Bennett and myself as principal, and Farrier as security. I had no conversation with the marshal upon the subject. I refer you to the bond, which is, I suppose, on file. I don't remember further than the above.

Interrogatory 17th. We put them on a schooner, Magnet, divided them at sea. I sold mine. Farrier disposed of his, or has them now, and the marshal sold Bennett's. We put them on the schooner to send them where they might be divided without being molested by the Georgia debt of nine thousand dollars. I was with the negroes; Bennett and Farrier were both there; the officers of the schooner and steamer that towed the schooner down were there, and possibly some passengers on the steamer.

Interrogatory 18th. Bennett owned one-half, Farrier and myself a quarter each. No one else to my knowledge interested. A division took place, as answered above, at sea, on board the schooner Magnet. I think Captain Taylor was master.

Interrogatory 19th. We did remove the negroes immediately from the jail to the schooner, and got a steamer to tow us in the bay. I don't know that there was much hurry in the matter. I did apprehend the mortgage would be sent down as soon as possible. I never heard of but the one liability against the negroes, that was the mortgage. I can't answer as to my co-purchasers' fears. I suppose it could not have been the object of Bennett, or he would have sent his negroes out of the State. My object was to save myself.

Interrogatory 20th. As to the scenes and changes, through which the negroes have passed, up to this time, I am totally unable to say, but suppose they have passed from a corn field to a cotton-patch, as other negroes do in this country. I carried only a portion of my part of the purchase; I landed mine in New Orleans; some were landed in Mobile. I had no armed men with me; no concealment on my part; all was open day light. I can't say where or when the others were landed, but when I returned I found a number in Appalachicola, belonging to Bennett.

Interrogatory 21st. I have heard that Roberts, Allen & Co., bought Jane and her child. Don't know what their impression was, but know she lived with Roberts. He resided in Appalachicola at the time of the various transactions. She was levied upon by Hawley, as the marshal, and sold at the suit of defendant, assignee, &c.

Interrogatory 22d. I do not know.

Interrogatory 23d. Only from what I have seen of record, and the sale of the negroes. It was, I think, upon a mortgage to some bank in Georgia, and assigned to Farish Carter, made by Jordan, upon a portion purchased by us all. Some were mortgaged, some were not. I have answered this in the direct interrogatories of the plaintiff.

Interrogatory 24th. Witness knows nothing further that will benefit either party.

R. J. FLOYD.

I have no interest in any of these suits.

R. J. FLOYD.

Sworn to before us, this 26th December, 1846.

HOPEWELL DORSEY, *Commissioner*.
E. D. TRACY, *Commissioner*.

James F. Farrier appeared, and answered as follows:

To 1st interrogatory he saith: He knows the parties.

To the 9th interrogatory he answers and saith: That he knows that the negroes sued for were in the possession of plaintiff in 1842. He afterwards saw them in the possession of the marshal of the Appalachicola district, and knows that they were taken by the marshal at the request, and by the order of Farish Carter, and sold at public sale, in the city of Appalachicola, by the marshal, and most of them bought by R. H. Long, of Jackson county, who taken [took?] them to Jackson county, through Alabama.

JAMES F. FARRIER.

Sworn to before us, this 26th of December, 1846.

HOPEWELL DORSEY, *Commissioner*.
E. D. TRACY, *Commissioner*.

To the cross interrogatories witness answers and sayeth:

Cross interrogatory 1st. About eleven or twelve years.
Cross interrogatory 2d. No.
Cross interrogatory 3d. Yes.
Cross interrogatory 4th. No.

JAMES F. FARRIER.

Sworn to and subscribed before us, 26th December, 1846.

HOPEWELL DORSEY, *Commissioner*.
E. D. TRACY, *Commissioner*.

4. He next read the three depositions of Isaac Brown, beginning with that last taken, then the second, and then the first, as follows:

Interrogatories to be propounded to Isaac Brown, a material witness for plaintiff, and who resides beyond the limits of Franklin county.

Interrogatory 1st. Do you know the parties?

Interrogatory 2d. Were you present in Appalachicola at any sale of negro slaves by the United States' marshal of the Appalachicola district,

in 1842 and 1843? If yea, state the particulars of sale as far as you know, at whose instance said negroes were sold, and if you know any of said negroes, state their names, ages, and other descriptions.

Interrogatory 3d. Was defendant present at said sales; if yea, what did he do or say in relation to the same? State fully and particularly.

Interrogatory 4th. In whose possession were these negroes previous to levy and sale by the marshal? And state your means of knowing.

Interrogatory 5th. What were said negroes worth at or about the time of levy and sale, and what was their hire worth?

Interrogatory 6th. Do you or not know of Bennett, plaintiff, being present at both of said sales; and state whether or not he forbid said sale; asserted publicly his claim to each of said negro slaves as they were put on the stand, and declared his intention of suing for the same; if yea, did these facts, or any other, and what other, cause said slaves to sell for much less than they otherwise would have brought; if yea, how much less in your opinion? State all you know.

A. G. SEMMES,
*Plaintiff's attorney.*

*Cross interrogatories to Isaac Brown, in case of Bennett vs. Carter.*

1st. If you answer that you were present at sale of negroes as interrogated in second direct interrogatory, and should state the names of said negroes, &c., then be very particular in stating for how long a time you knew said negroes; whether they were in your charge; if yea, how long; and state directly whether the list of names which you may furnish is wholly from memory, or whether it is given from a list; if from a list, then state how you came by said list of names; answer directly whether plaintiff has, at any time, furnished you with a list of the names; if yea, where, and for what purpose; if plaintiff has not furnished you with a list of names, has any one else done so; if yea, when, and for what purpose?

2d. If you were present at the sale, did you have any conversation with defendant about the sale; if yea, did he endeavor to embarrass the sale, or did he offer you facilities for purchasing; did plaintiff embarrass the sale; if yea, how?

2d. Did you ever hear plaintiff threaten to prevent the delivery of said negroes to purchasers; did conduct of plaintiff injuriously affect sale of said negroes; if yea, how?

4th interrogatory. If, in answering the fourth interrogatory, you should say you saw said negroes in possession of Bennett before the sale, state when, their names and your means of recollecting their names at this time.

Interrogatory 5th. Did you ever go with Bennett to the plantation of Richard H. Long, in Jackson county, or any where else, and take possession of a part of said negroes; if yea, name them; if you cannot name them, say how many there were, and what became [of them,] after they were taken from such place.

Interrogatory 6th. Did you ever see any of the negroes that were sold in Appalachicola at the sales referred to, afterwards in possession of Ben-

nett; if yea, how many, when and where; were they in Georgia or Florida, or both?

Interrogatory 7th. Or did you ever hear Bennett say that he had taken a part of said negroes from Jackson county; if yea, how many; did he ever tell you what he intended to do, or had done, with them?

Interrogatory 8th. Did Bennett ever tell you, or did you by any other means get to know, that he had taken a part of said negroes from Jackson county; if yea, how did Bennett get possession of them; was it by day or by night, by legal means, or by force?

Interrogatory 9th. Do you know of any of said negroes being at this time in Florida, or of their having been in Florida at any time since they were sold; if yea, how many, their names, and in whose possession?

Interrogatory 10th. Do you know that any of the negroes sold at the time referred [to,] were afterwards in the possession of J. Farrior, Roberts, and Allen, or Nathan Baker? If yea, name them, and the time when they were so possessed.

R. J. MOSES, *for plaintiff*.

By virtue of a commission from the honorable circuit court of Franklin county, to us directed, we have caused Isaac Brown, the witness named in the said commission and interrogatories, to come before us, and after being duly sworn true answers to make to the annexed interrogatories, did answer as follows:

To the 1st interrogatory he says: I do.

To the 2d interrogatory he says: He was present in Appalachicola at the sale made by the marshal of the Appalachicola district of the following negro slaves, in the year 1842 and 1843; the sale was made by the marshal at the instance and direction, and for the use of Farish Carter, assignee of the Georgia railroad and banking company; I know the negroes, having had the most of them under my direction on board of a steamboat on the Appalachicola river, in the fall of 1842. Their names, and descriptions, and value are as follows:

Rica, a man, about 17 to 20 years old, worth from $600 to $650.
Tom, a man, about 16 to 18 years old, worth from $600 to $625.
Charles, a man, about 30 to 35 years old, worth from $600 to $675.
Elias, a man, about 19 to 20 years old, worth from $600 to $650.
Sam, a man, from 30 to 35 years old, worth from $100 to $150.
Jeff, a man, from 25 to 30 years old, worth from 900 to 950.
Isaac, a man, from 20 to 25 years old, worth from 600 to 650.
Allen, a man, from 20 to 30 years old, worth from $600 to $650.
Cato, a man, from 25 to 35 years old, worth from $500 to $550.
John, a man, from 30 to 40 years old, worth from $500 to $600.
Joe, a man, from 18 to 20 years old, worth $600 to $700.
Amos, a man, from 25 to 30 years old, worth from $1,000 to $1,100.
Albert, a man, from 18 to 20 years old, worth from $600 to $700.
Andrew, a boy, from 10 to 12 years old, worth from $400 to $450.
Pink, a woman, from 20 to 25 years old, worth from $450 to $500.
Charles, a boy, from 7 to 8 years old, worth from $200 to $250.

Henry, a boy, from 3 to 4 years old, worth from $150 to $200.
Dinah, a woman, from 30 to 35 years old, worth about $400 to $450.
Antoinette, a girl, from 8 to 10 years old, worth from $250 to $300.
Amarilla, a girl, from 6 to 8 years old, worth from $200 to $250.
Fanny, a girl, from 4 to 6 years old, worth from $150 to $200.
Emeline, a girl, from 2 to 4 years old, worth from $100 to $150.
Nancy, a woman, from 20 to 25 years old, worth from $450 to $500.
Enoch, a boy, 1 year old, worth from $100 to $125.
Patsey, a woman, from 25 to 30 years old, worth from $500 to $550.
Henry, a boy, 1 year old, worth $100 to $150.
Sally, a woman, from 30 to 40 years old, worth from $500 to $525.
Irene, a girl, from 13 to 15 years old, worth from $450 to $500.
Tom, a man, from 45 to 55 years old, worth from $150 to $200.
Sarah, a woman, from 45 to 55 years old, worth from $150 to $200.
Camilla, a girl, from 16 to 17 years old, worth from $300 to $350.
Jane, a woman, from 30 to 35 years old, worth from $400 to $500, and Henry, a boy, child of Jane.

To the third interrogatory he says: The defendant, Carter, was present at said sales; and in conversation with witness informed witness that the above negroes were being sold by the marshal for his (Carter's) benefit; that he had them levied on to satisfy his execution against Warren Jordan; that the negroes were attached by his direction, and if witness wanted to purchase one or more of the negroes he could bid them off, and arrange about the payment afterwards.

To 4th interrogatory he says: I had seen the above described negroes previous to the levy by the marshal, during the summer and fall of the year of 1842, in the possession of plaintiff, Bennett. I was frequently at Bennett's house, in Appalachicola, and saw many of them there. I was also engaged a part of the fall on a steamboat for Bennett, and had many of these negroes with me.

To 5th interrogatory he says: I have stated in my answer to interrogatory second what I believe to be a fair value of the negroes in question, and, being a farmer, had some knowledge of the market for negroes; the hire of the grown men was worth from $20 to $25 per month; the hire of the boy, Andrew, from $8 to $10 per month. Bennett employed them on steamboats; the women and girls were worth from $10 to $15 per month; the small children were worth nothing for hire.

To 6th interrogatory he says: Bennett was present at both said sales, and forbid the same, and asserted his claim to each of the slaves as they were put upon the stand, and said he would sue for the same. These facts, in the opinion of witness, caused said slaves to sell for less than they otherwise would.

To first cross interrogatory he says: He has answered part of the interrogatory in his answer to the direct interrogatories, and that he had many of the slaves employed under his direction from the last of the summer to the beginning of the fall of 1842, and they were levied upon by the marshal, getting timber and working upon the boat; and

during that time (about three months) he, deponent, slept at Bennett's house most of the time, by which means deponent became acquainted with the names, description, and qualities of the several negroes named; a list of names was given originally from memory, and my memory is now assisted by a copy of my answers given to interrogatories heretofore propounded to me in this cause; neither the plaintiff nor any person else has furnished me with a list of the slaves.

To 2d cross interrogatory: He has already answered, except that he knows of no embarrassment given, or offered to be given or made, by the defendant to the sale.

To 3d cross interrogatory he says: He did not hear the plaintiff threaten to prevent the delivery of the negroes to purchasers; has already answered as to the last clause of this interrogatory.

To the 4th cross interrogatory he says: He has already stated.

To the 5th cross interrogatory he says: He did go to the said plantation in company with Bennett, and there were, as deponent believes, sixteen of these slaves taken therefrom. But it being night, and the deponent not being in contact with said slaves, and the same being under the direction of Bennett, he cannot particularize names or ages, his information as to number being derived from the plaintiff.

To 6th interrogatory: He saw a part of said slaves afterwards in the possession of Bennett; they were in Georgia at that time, they being part of those obtained from the plantation of Long.

To 7th cross interrogatory he says: Did hear him so say, as stated in answer to 5th cross interrogatory; said he intended to sell them.

To 8th cross interrogatory he says: He has already answered; Bennett took them on a claim of right or title.

To 9th cross interrogatory he says: He does not know where they now are. They were in Florida, at Long's plantation, after the sales. As to the balance of this interrogatory, does not know.

To 10th cross interrogatory he says: He does not know.

ISAAC BROWN.

Answered, subscribed, and sworn to, before us, this 23d day of November, A. D. 1848.

JOHN B. TAYLOR, *Commissioner*, [SEAL.]
RICH'D T. CAMPBELL, *Com'r.* [SEAL.]

Interrogatories to be exhibited to Nathan Baker, Isaac Brown, and John Miligan, material witnesses for plaintiff.

Interrogatory 1. Do you know the parties?

Interrogatory 2. Were you present in Appalachicola at any sale of a number of negroes by the marshal of the Appalachicola district in 1842 and 1843? If yea, state the particulars of said sale as far as you know. If any sale took place, state at whose instance were said negroes sold. Did you know any of the negroes? If yea, state their names, ages, and other description.

Interrogatory 3. Was defendant present at said sales, (if any?) What

did he do or say in relation to said negroes? State fully and particularly.

Interrogatory 4. In whose possession were these negroes previous to the levy on them by the marshal? State fully and particularly, and your means of knowing.

Interrogatory 5. What was a fair price for said negroes, and what was their hire worth?

Interrogatory 6. State fully and particularly all you know in regard to said slaves that will benefit plaintiff.

A. G. SEMMES.

*Cross interrogatories to Nathan Baker, John Miligan, Isaac Brown.*

If you answer that you were deputy marshal of the Appalachicola district in 1841 and '2, and as such marshal had possession of a number of negroe slaves, please state, as nearly as you can, the names and description of said slaves, and state how you arrived at the names, whether from memory or from a list furnished you; and if from a list furnished you, state by whom said list was furnished.

Interrogatory 2. If you answer the first interrogatory affirmatively, please state by whom these negroes were first brought into Florida, as whose property; state whether or not they were attached as the property of one J. L. Hodges, at the suit of ———. State whether or not the said slaves when first brought into the Territory of Florida were in the possession of one Joseph Harris. If yea, whose agent did Harris represent himself to be?

Interrogatory 3. Please state whether (if you answer that they were levied on in the possession of Harris as the property of Hodges) one R. J. Moses, as the attorney of Warren Jordan, did or did not apply to you to know in what amount you would require bond for the replevy of said property, and whether you did not require a bond with two sureties, who should each be worth $40,000 over and above their debts, and that this $40,000 should be within the jurisdiction of the court; did said Moses suggest to you the names of Ropes and Ellison and Lockhart & Young, and did you not refuse them?

Interrogatory 4. Please state whether the plaintiff in this suit did not advise you to require a bond of the kind above described, and state whether you believe it were possible to give such a bond in Appalachicola.

Interrogatory 5. Did the plaintiff at any time call upon you and endeavor to prevail upon you to take his name as a bondsman for Warren Jordan? Did he ever remonstrate with you in regard to the heavy securities required by you, or did he exhibit any anxiety to have the negroes retained in your possession? If yea, in what manner?

Interrogatory 6. If you answer the negroes referred to by you in your answers were levied on as the property of Hodges at the suit of the ———, and that they were taken by you out of the possession of Joseph Harris, answer whether the said Harris made any effort to

claim or replevy them? If yea, state as far as you know what steps he took; and, finally, say whether he succeeded in filing a satisfactory claim or replevin bond.

Interrogatory 7. If you answer that the negroes were not replevied out of your possession by Joseph Harris for himself or as agent for Warren Jordan, please state whether or not the said Harris returned to Georgia leaving the negroes in your possession. If yea, state whether or not the plaintiff, A. T. Bennett, went with said Harris, and state also whether A. T. Bennett had any conversations with you, before he went, as to what his purpose was in going, or, after he returned, as to what had been done in regard to the negroes.

Interrogatory 8. If you answer that Harris went to Georgia with or without Bennett, state, as well as you can remember, how long it was before they returned to Florida, Appalachicola, and state whether or not any other person returned with them.

Interrogatory 9. Do you know one Reuben Thornton? If yea, when did you first see him, in whose company, what was his business; did he ever claim the negroes referred to in these interrogatories? Did he ever make any inquiries of you as to the bond that would be required to replevy or claim them? If yea, what bond did you require? Answer this as fully as you can. Was the bond not a very large one? Had you any doubts about Reuben Thornton being the owner of the slaves? If yea, was this the reason that you were cautious in allowing them to go out of your possession? (That is to say, if you were cautious.) If you answer that you had doubts as to the true ownership of Thornton, please state how these doubts arose. Did you not learn, through plaintiff, that Warren Jordan was the owner, that Thornton held a nominal bill of sale, and if you allowed them to be replevied, that they would be removed beyond the reach of Jordan's creditors, and that the bond would be the creditor's only resort? Was or was not this the cause of your caution, (if you were cautious;) or if this was not the reason, why did you require each of the securities to justify in property worth $40,000 over and above their debts, and this property to be within the jurisdiction of the court?

Interrogatory 10. Did Reuben Thornton, or Warren Jordan, or Joseph Harris, replevy said negroes, or any part of them, out of your possession? If yea, which of them replevied, and upon what bond, if any? State whether any one else replevied or claimed them, and upon what bond.

Interrogatory 11. If you answer that said slaves were replevied or claimed by any one, state how long this was after they first came into your possession.

Interrogatory 12. Do you know whether the said slaves, or any part of them, were sold while in your possession? If yea, by whom and to whom? If you were present at the sale, state whether you heard any conversation between Bennett and Thornton in regard to the ownership of Thornton in said slaves; state that conversation, if any occurred, as nearly as you remember it.

Interrogatory 13. State, as nearly as you can remember, what became of said slaves, after they were delivered by you. Did they remain any time in Appalachicola, or were they returned to Georgia or shipped to New Orleans, or what became of them? Did any white person leave Appalachicola in charge of said slaves? If yea, who was that person?

Interrogatory 14. Did you ever attach any of the aforesaid slaves at the suit of the Georgia Railroad and Banking Company? If yea, name them. Were these all the negroes originally levied on by you? If not, state as well as you can what had become of the rest.

Interrogatory 15. If you answer that last question affirmatively, state whether they were ever replevied. If yea, by whom and on what bond?

Interrogatory 16. Did you ever again attach these slaves, or any part of them? Or did you ever see them in the custody of any other officer? If yea, whose custody, and what portion of the slaves?

Interrogatory 17. If you answer affirmatively the last interrogatory, say whether you ever saw them sold, and to whom and when.

Interrogatory 18. If you answer 17th interrogatory affirmatively, state whether, when the said negroes were about to be delivered to the purchaser, you heard the plaintiff in this suit threaten resistance to the delivery. Did you ever converse with him on the subject? What did he say? Did you see him on the day the negroes were delivered? Was he armed? If yea, how? Was he alone or in company? If in company, with whom? Were his companions armed? If armed, for what avowed purpose?

Interrogatory 18. Were the negroes delivered, or were they prevented by an armed force? Did you issue any writs in regard to those negroes? If yea, what writs?

Interrogatory 19. Has plaintiff ever told you that he had retaken a part of said slaves after their delivery? If yea, how many and their names? When were they taken, and from whence?

Interrogatory 20. If plaintiff ever told you that he had retaken a part of said slaves, or if you know it by any other means, after stating your means of information, state if you know what became of said slaves, or any part thereof, and if you know only as to a part, state the names of such part or portion.

Interrogatory 21. If you answer affirmatively the 12th cross interrogatory, state whether of your own knowledge the plaintiff knew that said slaves were mortgaged in Georgia. If yea, to whom were they mortgaged? State whether plaintiff knew the circumstances under which they were brought from Georgia. If yea, state what these circumstances were, and state whether plaintiff knew these facts, whatever they may have been, at the time that he purchased the slaves.

Interrogatory 22. If you answer that plaintiff purchased the slaves referred to, state any conversation plaintiff had with you or in your presence as to the disposition which he intended to make of the slaves.

Interrogatory 23. Was the plaintiff the sole purchaser, or were there

others interested? If yea, who? Was R. J. Floyd a joint purchaser? Was W. G. M. Davis interested in the purchase? Was James F. Farrior interested? If yea, in what proportions?

Interrogatory 24. Were any of the negroes shipped from Appalachicola? If yea, how many and which of them? How long after the sale? Did R. J. Floyd go with the slaves? Was any one else with them? What portion, if any, were relanded? And if relanded, where? Were any relanded and returned to Appalachicola? If yea, when were they returned, and how?

Interrogatory 25. Answer any other matter that will benefit defendant.

R. J. MOSES,
J. CARAWAY SMITH,
*Attorneys for defendant.*

STATE OF FLORIDA,
*County of Franklin.*

In the circuit court of Franklin county.

By virtue of a commission from the honorable the circuit court of Franklin county, to us directed, we have caused Isaac Brown, one of the witnesses named in the interrogatories annexed, Nathan Baker and John Miligan being absent, to come before us, and after being duly sworn, true answers to make to certain interrogatories, examined deponent, and he answers as follows:

To 1st interrogatory, witness answers he does.

2d interrogatory. Witness answers he was present in Appalachicola, at the sales made by the marshal of the Appalachicola district, of the following negro slaves, in the years eighteen hundred and forty-two and three. The sale was made by the marshal, at the instance and direction, and for the use of Farish Carter, assignee of the Georgia Railroad and Banking Company. I know the negroes, having had the most of them under my direction, on board of a steamboat, on the Appalachicola river, in the fall of eighteen hundred and forty-two. Their names are as follows:

Rica, a man from 17 to 20 years of age, worth from six to six hundred and fifty dollars; Tom, a man from sixteen to eighteen years of age, worth from six to six hundred and twenty-five dollars; Charles, a man from thirty to thirty-five years of age, worth from six to six hundred and seventy-five dollars; Elias, a man from nineteen to twenty years of age, worth from six to six hundred and fifty dollars; Sam, a man from thirty to thirty-five years of age, worth from one to one hundred and fifty dollars; Jeff, a man from twenty-five to thirty years of age, worth from nine to nine hundred and fifty dollars; Isaac Anson, from twenty to twenty-five years of age, worth from six to six hundred and fifty dollars; Allen, a man from twenty to thirty years of age, worth from six to six hundred and fifty dollars; Cato, a man from twenty-five to thirty-five years of age, worth from five to five hundred

and fifty dollars; John, a man from thirty-five to forty years of age, worth from five to six hundred dollars; Joe, a man from eighteen to twenty years of age, worth from six to seven hundred dollars; Amos, a man from twenty-five to thirty years of age, worth from one thousand to one thousand one hundred dollars; Albert, a man from eighteen to twenty years of age, worth from six to seven hundred dollars; Andrew, a boy from ten to twelve years of age, worth from four to four hundred and fifty dollars; Pink, a woman from twenty to twenty-five years of age, worth from four hundred and fifty to five hundred dollars; Charles, a boy from seven to eight years of age, worth from two hundred to two hundred and fifty dollars; Henry, a boy from three to four years of age, worth from one hundred and fifty to two hundred dollars; Dinah, a woman from thirty to thirty-five years of age, worth from four to four hundred and fifty dollars; Antoinett, a girl from eight to ten years of age, worth from two hundred and fifty to three hundred dollars; Amarilla, a girl from six to eight years of age, worth from two to two hundred and fifty dollars; Fanny, a girl from four to six years of age, worth from one hundred and fifty to two hundred dollars; Emeline, a girl aged from two to four years, worth from one hundred to one hundred and fifty dollars; Nancy, a woman aged from twenty to twenty-five years, worth from four hundred and fifty to five hundred dollars; Enoch, a boy one year of age, worth from one hundred to one hundred and twenty-five dollars; Patsey, a woman aged from twenty-five to thirty years, worth from five hundred to five hundred and fifty dollars; Henry, a boy one year of age, worth from one hundred to one hundred and fifty dollars; Sally, a woman aged from thirty to forty, worth from five hundred to five hundred and twenty-five dollars; Irene, a girl aged from thirteen to fifteen, worth from four hundred and fifty to five hundred dollars; and there were other negroes sold by the marshal at the same time, whose names and description I do not recollect.

Cross interrogatory 3d. Defendant, Carter, was present at said sale, and in conversation with witness informed witness that the above negroes were being sold by the marshal for his, Carter's, benefit; that he had them levied on to satisfy his execution against Warren Jordan; that these negroes were first attached by his, Carter's, directions, and that if witness wanted to purchase one or more of the negroes, he could bid them off, and arrange about the payment afterwards with him, Carter.

Interrogatory 4th. I have seen the above described negroes, previous to the levy by the marshal, during the summer and fall of the year of eighteen hundred and forty-two, in possession of plaintiff, Bennett. I was frequently at Bennett's house in Appalachicola, and saw many of them there. I was engaged part of the fall on a steamboat for Bennett, and had part of the negroes with me.

Interrogatory 5th. Witness has stated, in answer to interrogatory second, what he believes to be a fair value of the negroes in question; and being a farmer, had some knowledge of the market for negroes. The hire of the grown men were worth from twenty to twenty-five

dollars per month; the hire of the boy, Andrew, was worth from eight to twelve dollars per month. Bennett employed them on steamboat. The women and girls were worth from ten dollars to fifteen dollars per month. Here the smaller children were not worth anything for their hire.

Interrogatory 6th. Witness knows nothing more that will benefit the plaintiff.

ISAAC BROWN.

Sworn to and subscribed before us, this the twenty-fourth day of December, eighteen hundred and forty-six.

SAMUEL STEPHENS, *Commissioner*.
HUGH RUSK, *Commissioner*.

*Cross interrogatories.*

1st cross interrogatory. Witness answers, that he was not deputy marshal.

2d cross interrogatory. Witness answers, do not know.

3d cross interrogatory. Witness answers, knows nothing about it.

4th cross interrogatory. Witness answers, the plaintiff did not require any such bond.

5th cross interrogatory. Witness answers, plaintiff never did.

6th cross interrogatory. Witness answers, he knows nothing about it.

7th cross interrogatory. Witness answers, he does not know.

8th cross interrogatory. Witness answers, he does not know.

9th cross interrogatory. Witness answers, he has seen Reuben Thornton; was not intimate with him; does not know that he claimed the negroes; had no conversation with him about them.

10th cross interrogatory. Witness does not know.

11th cross interrogatory. Witness does not know.

12th cross interrogatory. Never was in witness's possession.

13th cross interrogatory. Witness does not know.

14th cross interrogatory. Witness knows nothing about it.

15th cross interrogatory. Witness does not know.

16th cross interrogatory. Witness has answered all he knows of this subject in the second direct interrogatory.

17th cross interrogatory. Witness has stated this in the direct interrogatory.

18th cross interrogatory. Witness was not present when the negroes were taken away from Appalachicola; knows nothing about it.

19th cross interrogatory. Plaintiff never told witness that he had retaken part of said slaves, but witness has seen in possession of plaintiff Bennett, subsequent to the sale by the marshal, a part of said slaves, to wit: Sam, John, Cato, Elias, Dinah, Antoinette, Amarilla, Fanny, Nancy, Enoch, which were purchased by Richard H. Long, of Jackson county, at the marshal's sale referred to; also Jeff and Irene, which were bought of the marshal by R. C. Spann.

20th cross interrogatory. Witness has answered this in the nineteenth cross interrogatory, so far as he knows.

21st cross interrogatory. Witness knows nothing about this.

22d cross interrogatory. Witness has had frequent conversations with plaintiff in relation to these negroes, during the summer and fall of eighteen hundred and forty-two. Plaintiff always said to witness that he had purchased the negroes at a fair sale, that he had given full value for them, and that he would keep them in Appalachicola subject to any suits that might be commenced against them.

23d cross interrogatory. Witness does not know.

24th cross interrogatory. Not within the knowledge of witness.

25th cross interrogatory. Witness knows nothing more that will benefit the defendant.

ISAAC BROWN.

Sworn to and subscribed this the twenty-fourth day of December, eighteen hundred and forty-six.

SAMUEL STEPHENS, *Commissioner*.
HUGH RUSK, *Commissioner*.

Interrogatories to be propounded to Nathan Baker, Isaac Brown, and John Milligan, material witnesses for plaintiff, and who reside beyond the county of Franklin, to wit, in Jackson county, Florida.

Interrogatory 1. Do you know the parties?

Interrogatory 2. To Nathan Baker. Were you deputy marshal for the district of Appalachicola in 1841 and 1842? If yea, did you have in your possession a number of negro slaves in Appalachicola? If yea, please state how you came possessed of them. State as well as you recollect how many they were, and a description of them. In whose possession were they when you levied on them? Did you part with the possession of these negroes? If yea, to whom, at whose instance, and when, and state all the circumstances.

Interrogatory 3. To each witness. What became of these negroes after they went in possession of plaintiff, (if you answer that they were in his possession;) if sold, who by, at whose instance, when and where; where did they go to, and who was with them; what were these negroes worth; what was their hire worth; and state fully and particularly all you know in relation to these negroes, and plaintiff's claim, as though you were particularly interrogated thereto.

A. G. SEMMES,
*Attorney for plaintiff*.

Cross interrogatories to Nathan Baker, John Milligan, Isaac Brown.

If you answer that you were deputy marshal of Appalachicola district in 1841 and '2, and as such marshal had possession of a number of negro slaves; please state as nearly as you can the names and description of said slaves, and state how you arrive at the names; whether from memory or from a list furnished you, and if from a list furnished you, state by whom said list was furnished.

Interrogatory 2. If you answer the first interrogatory affirmatively,

please state by whom these negroes were first brought into Florida, as whose property; state whether or not they were attached as the property of one J. L. Hodges, at the suit of . State whether or not the said slaves, when first brought into the territory of Florida, were in the possession of one Joseph Harris? If yea, whose agent did Harris represent himself to be?

Interrogatory 3. Please state whether (if you answer that they were levied on in the possession of Harris, as the property of Hodges,) one R. J. Moses, as the attorney of Warren Jordan, did or did not apply to you to know in what amount you would require bond for the replevy of said property, and whether you did not require a bond with two securities, who should each be worth $40,000, over and above their debts, and that this $40,000 should be within the jurisdiction of the court? Did said Moses suggest to you the names of Roper & Ellison, and Lockhart & Young, and did you not refuse them?

Interrogatory 4. Please state whether the plaintiff in this suit did not advise you to require a bond of the kind above described, and state whether you believe it were possible to give such bond in Appalachicola.

Interrogatory 5. Did the plaintiff at any time call upon you and endeavor to prevail upon you to take his name as a bonsdman for Warren Jordan; did he ever remonstrate with you in regard to the heavy securities required by you, or did he exhibit any anxiety to have the negroes retained in your possession; if yea, in what manner?

Interrogatory 6th. If you answer that the negroes referred to by you in your answers were levied on as the property of Hodges, at the suit of the , and that they were taken by you out of the possession of Joseph Harris; answer whether the said Harris made any efforts to claim or replevy them. If yea, state as far as you know what steps he took, and finally say whether he succeeded in filing a satisfactory claim or replevin bond.

Interrogatory 7th. If you answer that the negroes were not replevied out of your possession by Harris, for himself, or as agent for Warren Jordan, please state whether or not the said Harris returned to Georgia, leaving the negroes in your possession; if yea, state whether or not the plaintiff, A. T. Bennett, went with said Harris, and state also whether A. T. Bennett had any conversations with you before he went, as to what his purpose was in going; or, after he returned, as to what had been done in regard to the negroes.

Interrogatory 8th. If you answer that Harris went to Georgia, with or without Bennett, state, as well as you can remember, how long it was beforet hey returned to (Florida) Appalachicola, and state whether or not any other person returned with them?

Interrogatory 9th. Do you know one Reuben Thornton; if yea, when did you first see him, in whose company, what was his business; did he ever claim the negroes referred to in these interrogatories; did he ever make any inquiries of you as to the bond that would be required to replevy or claim them; if yea, what bond did you require, (answer this as fully as you can;) was the bond not a very large one;

had you any doubts about Reuben Thornton being the owner of the slaves; if yea, was this the reason that you were cautious in allowing them to go out of your possession, (that is to say, if you were cautious.) If you answer that you had doubts as to the true ownership of Thornton, please state how these doubts arose; did you not learn through plaintiff that Warren Jordan was the owner, that Thornton held a nominal bill of sale, and if you allowed them to be replevied, that they would be removed beyond the reach of Jordan's creditors, and that the bond would be the creditors' only resort; was or was not this the cause of your caution, (if you were cautious;) or if this was not the reason, why did you require each of the securities to justify in property worth $40,000, over and above their debts, and this property to be within the jurisdiction of the court?

Interrogatory 10th. Did Reuben Thornton, or Warren Jordan, or Joseph Harris, replevy said negroes, or any part of them, out of your possession; if yea, which of them replevied, and upon what bond, if any; state whether any one else replevied or claimed them, and upon what bond.

Interrogatory 11th. If you answer that said slaves were replevied or claimed by any one, state how long this was after they first came into your possession.

Interrogatory 12th. Do you know whether the said slaves, or any part of them, were sold while in your possession; if yea, by whom, and to whom? If you were present at the sale, state whether you heard any conversation between Bennett and R. Thornton, in regard to the ownership of Thornton in said slaves; state that conversation, if any occurred, as nearly as you remember it.

Interrogatory 13th. State as nearly as you can remember it, what became of said slaves, after they were delivered by you; did they remain for any time in Appalachicola, or were they returned to Georgia, or shipped to New Orleans, or what became [of] them; did any white person leave Appalachicola in charge of said slaves; if yea, who was that person?

Interrogatory 14th. Did you ever attach any of the aforesaid slaves, at the suit of the Georgia Railroad and Banking Company; if yea, name them; were these all the negroes originally levied on by you; if not, state as well as you can what had become of the rest.

Interrogatory 15th. If you answer the last question affirmatively, state whether they were never replevied; if yea, by whom, and in what bond.

Interrogatory 16th. Did you ever again attach these slaves, or any part of them, or did you ever see them in the custody of any other officer; if yea, whose custody, and what portion of the slaves?

Interrogatory 17th. If you answer affirmatively the last interrogatory, say whether you ever saw them sold, and to whom and when.

Interrogatory 18th. If you answer 17th interrogatory affirmatively, state whether, when the said negroes were about to be delivered to the purchaser, you heard the plaintiff in this suit threaten resistance to the

delivery; did you ever converse with him on the subject; what did he say; did you see him on the day the negroes were delivered; was he armed; if yea, how; was he alone or in company; if in company, with whom; were his companions armed; if armed, for what avowed purpose?

Interrogatory 18th. Were the negroes delivered, or were they prevented by an armed force; did you issue any writs in regard to these negroes; if yea, what writs?

Interrogatory 19th. Has plaintiff ever told you he had retaken a part of said slaves, after their delivery; if yea, how many, their names, when were they taken, and from whence?

Interrogatory 20th. If plaintiff ever told you that he had retaken a part of said slaves, or if you know it by any other means, after stating your means of information, state if you know what became of said slaves, or any part thereof, and if you know only as to a part, state the names of such part or portion.

Interrogatory 21st. If you answer affirmatively the 12th cross interrogatory, state whether of your knowledge the plaintiff knew that said slaves were mortgaged in Georgia; if yea, to whom were they mortgaged; state whether plaintiff knew the circumstances under which they were brought from Georgia; if yea, state what these circumstances were, and state whether plaintiff knew these facts, whatever they may have been, at the time that he purchased the slaves.

Interrogatory 22d. If you answer that plaintiff purchased the slaves referred to, state any conversation plaintiff had with you, or in your presence, as to the disposition which he intended to make of the slaves?

Interrogatory 23d. Was the plaintiff the sole purchaser, or were there others interested; if yea, (who;) was R. J. Floyd a joint purchaser; was W. G. M. Davis interested in the purchase; was Jas. F. Farrior interested; if yea, in what proportions?

24th interrogatory. Were any of the negroes shipped from Appalachicola; if yea, how many, and which of them; how long after the sale; did R. J. Floyd go with the slaves; was any one else with them; what portion, if any, were relanded, and if relanded, where; were any relanded and returned to Appalachicola; if yea, when were they returned, and how?

25th interrogatory. Answer any other matter that will benefit defendant.

R. J. MOSES,
J. CARAWAY SMITH,
*Attorneys for defendant.*

Circuit court, Franklin county.

STATE OF FLORIDA,
*County of Franklin.*

By virtue of a commission from the honorable the circuit court of Franklin county to us directed, we have caused Isaac Brown, one of

the witnesses named in the interrogatories annexed, the other two witnesses being absent, to come before us, and after being duly sworn true answers to make to certain interrogatories, examined deponent, and he answers as follows:

1st interrogatory. Witness answers, he does.

2d interrogatory, (addressed to N. Baker particularly.) Witness does not answer.

3d interrogatory. I know that the plaintiff, Bennet, in the summer of 1842, had possession of negro slaves named—

Rica, a man, from 17 to 20 years old.
Tom, a man, from 18 to 20 years old.
Charles, a man, from 30 to 35 years old.
Elias, a man, from 19 to 20 years old.
Sam, a man, from 25 to 30 years old.
Jeff, a man, from 25 to 35 years old.
Isaac, a man, from 20 to 30 years old.
Allen, a man, from 20 to 30 years old.
Cato, a man, from 25 to 35 years old.
John, a man, from 30 to 40 years old, a blacksmith.
Joe, a man, from 20 to 25 years old.
Amos, a man, from 25 to 30 years old.
Albert, a man, from 18 to 20 years old.
Andrew, a boy, from 12 to 15 years old.
Pink, a woman, from 20 to 25 years old.
Two children: Charles, 7 years old; Henry, about 3 years old.
Dinah, a woman from 30 to 35 years old, $400 to $450.
Her four children, to wit: Antoinette, a girl, from 8 to 10 years old, $250 to $300.
Amarilla, a girl, 6 to 8 years old.
Fanny, a girl, from 4 to 6 years old.
Emeline, a girl, from 2 to 4 years old.
Nancy, a woman, from 20 to 25 years old.
Her child, Enoch, 6 months old.
Patsey, a woman, 25 to 30 years old, (fine cook;) and
Child Henry, 1 year old, $100 to $150.
Sally, a woman, 30 to 40 years old.
Irene, a girl, 13 to 15 years old.

These were all the negroes whose names and description I now recollect. The reason I recollect particularly the names and description of these negroes was, that I was that year employed on a steamboat on the Appalachicola river, and had the most of these negroes on the boat with me, and in my employ repairing boat. There were several other negroes in the possession of Bennet, but I do not recollect their names and description particularly. I am a farmer, and know the full value of the slaves before mentioned; I believe the average value of the whole of these negroes was at that time, to wit, 1842, from six hundred and fifty to seven hundred and fifty dollars. I think this was a fair average value, from the fact the men, and boys, and women [were]

uncommonly likely; some of the men were superior mechanics, blacksmiths, &c. I know that about the time Bennett had these negroes, that negroes were selling about Brown's Ferry, and in Bainbridge, Georgia, from seven hundred to seven hundred and fifty dollars for negro fellows, and other negroes in proportion. I think the negro men were worth from twenty to twenty-five dollars per month hire from that time; Bennett employed them on steamboats. Negro women were worth from ten to fifteen dollars per month hire. I was present on the days the above described negroes were sold by the marshal; they were sold by Hez. Hawley, as marshal of the Appalachicola district, under an execution in favor of the Georgia Railroad and Banking Company, for the use of Farish Carter vs. Warren Jordan. Carter was present and urged the witness to purchase some of the negroes at the sale by the marshal; Carter seemed to be superintending the sale, and the marshal seemed to be governed by him, or his orders, in respect to the sale. In a conversation with Carter on the day of sale, Carter informed witness that he had had the negroes levied on to satisfy his execution; that these were first attached and levied on at his instance, and that if witness wanted one or more of the negroes he could bid them off, and arrange about the payment afterwards with him. Knows nothing more particularly.

ISAAC BROWN.

Sworn to and subscribed before us, this the 12th day of December, 1846.

C. J. SHEPARD,
EVAN JONES, Jr.,
*Commissioners.*

*Cross interrogatories.*

1st cross interrogatory. Witness answers, was not deputy marshal.
2d cross interrogatory. Don't know.
3d cross interrogatory. Never asked witness for a bond.
4th cross interrogatory. Did not require any thing of the kind.
5th cross interrogatory. Never did.
6th cross interrogatory. Don't know any thing about it.
7th cross interrogatory. Don't know.
8th cross interrogatory. Don't know.
9th cross interrogatory. I have seen Reuben Thorton; was not intimate with him; don't know whether he claimed the negroes or not; never did before me.
10th cross interrogatory. Don't know any thing about this interrogatory.
11th cross interrogatory. Don't know any thing about it.
12th cross interrogatory. Never was in witness's possession.
13th cross interrogatory. Never delivered them.
14th cross interrogatory. Know nothing about this interrogatory.
15th cross interrogatory. Knows nothing about this interrogatory.
16th cross interrogatory. Knows nothing about this interrogatory.

17th cross interrogatory. I have stated this in direct interrogatory.

18th cross interrogatory. Was not in Appalachicola; know nothing about it.

19th cross interrogatory. I saw plaintiff in possession of some ten or twelve of the negroes referred to in Decatur county, Georgia; I also know that the negroes in plaintiff's possession were purchased by Richard H. Long, of Jackson county, Florida, at the marshal's sale, and that he claimed them as his property before the time plaintiff had possession of them in Decatur county, Georgia, except two of them, which were claimed and owned by R. C. Spann, of Alabama.

20th cross interrogatory. Answered this as far as I know.

21st cross interrogatory. I know nothing about this.

22d cross interrogatory. I had conversations with plaintiff before and after Carter attached these negroes; he always said he had purchased them at a fair sale, that he had given a full value for them, and that he would keep them in Appalachicola, always subject to any suit that might be commmenced against them, by any one.

23d cross interrogatory. Don't know any thing about it.

24th cross interrogatory. Don't know any thing about it.

25th cross interrogatory. Know nothing more.

ISAAC BROWN.

Sworn to and subscribed before us, this 12th day of December, 1846.

C. J. SHEPARD,
EVAN JONES, Jr.,
*Commissioners.*

5th. He next read the agreement of counsel, dated December, A. D. 1846.

| | | |
|---|---|---|
| Bennett vs. Carter. | Farrior vs. Carter. | Roberts, Allen & Co., vs. Carter. |

And cases in which any of the parties are defendants, and Farish Carter, plaintiff.

We, the counsel for plaintiff and defendant, agree to admit the depositions, if properly taken, in either of the above cases, to be read as evidence in all the cases, so far as the same are applicable, and so far as the same may be decided by the court to be legal. Plaintiffs are to admit on the trial that the copy of the mortgage now of file in the said court, in the case of the Georgia Railroad and Banking Company, shall be considered in lieu of the original mortgage; that said mortgage was duly executed by Warren Jordan, attested by the witnesses regularly, and that the said mortgage was duly and legally assigned by the said company to said defendant. In other words, plaintiff is to admit the legal execution of said mortgage and assignment, provided that the court determines that the original mortgage and assignment presented

would be legal and proper testimony in the said cases. All questions as to the legality of this testimony is reserved. Plaintiff is willing to admit further that the mortgage was recorded as stated in said copy mortgage. It is further agreed that the following advertisement may be introduced in evidence by the plaintiff as proof of its contents.

Will be sold for cash on the thirty-first day of December, 1842, in front of the Exchange, in the city of Appalachicola, to satisfy a judgment and decree of foreclosure in favor of Farish Carter, assignee of the Georgia Railroad and Banking Company, for $16,783, and costs, and an order of sale and an execution in said case, the following negro slaves, to wit: Rica, a black boy, 17 years old; Tom, a black boy, 18 years old; Charles, a man, 35 to 40 years old; Elias, a yellow boy, 20 years old; Pink or Gincy, a yellow woman, 22 years old; Pink's two children, Charles and Henry; Dinah, a black woman, 35 years old; Amarilla, a yellow girl, five or six years old; Fanny, a yellow girl, 3 or 4 years old; Emeline, a yellow girl, 2 years old; Tom, a black man; Sarah, a black woman; Antoinette, a yellow girl, 7 or 8 years old; Clarissa, a black girl, 14 years old; Camilla, a black girl, 12 years old; Nancy and child, a woman, 35 years old; Ellen, a girl, 10 or 11 years old; Sam, a black man, 30 years old.

And also, at the same place, on the 9th January, 1843, the following slaves, to wit: Jeff, a black man, 35 to 40 years old; Isaac, a black man, 20 years old; Allen, a black man, 29 years old; Cato, a black man, 35 or 40 years old; John, a yellow man, 40 years old; Joe, a black man, 20 years old; Amos, a yellow man, 28 or 30 years old; Patsey and child, a dark woman, 28 years old; Sally, black woman, 40 years old; Andrew, a black boy, 11 years old; Albert, yellow man, 20 years old; Irene, yellow girl, 13 years old; Jane and child, yellow woman, 18 years old.

In satisfaction of said order and execution.

N. HAWLEY,
*Marshal, district of Appalachicola.*

December 17th, 1842.

It is admitted by counsel for Carter, that the levy therein referred to was made and directed by Farish Carter, that the negroes were sold according to the advertisement, and that the said Carter received the proceeds of sale. It is further admitted on the part of Carter's counsel, that such of the negroes named in the declaration of Bennett as are described or named in said advertisement were in the possession of Bennett when the levy was made. That such of the negroes named in the declaration of Farrior as are described or named in said advertisement were in the possession of Farrior when the levy was made. That such of the negroes named in the declaration of Roberts, Allen & Co., as are described or named in said advertisement, were in the possession of Roberts, Allen & Co., when the levy was made. It is further admitted by counsel for Carter, that said negroes were levied on by Hawley, the marshal, by the direction and order of the

said defendant; and that in pursuance of said orders, and direction of said Carter, said negro slaves were taken from the possession of plaintiffs, and that said levy and seizure by said marshal was previous to the commencement of said suits; and that said negro slaves were sold by said marshal, under the direction and at the instance of said Carter, and for his use and benefit. Defendant further agrees to admit, if required by plaintiff in the trial, that defendant, Carter, has recovered a judgment in the State of Georgia against plaintiff, Bennett, for the following named negroes, to wit: Cato, Elias, Sam, John, Charles, Henry, Dinah, Antoinette, Fanny, Emeline, Amarilla, Nancy, and Enoch; that said last mentioned sixteen negroes are a portion of these sued for by plaintiff, and contended by defendant as having been taken from Richard H. Long by plaintiff, Bennett, subsequent to these suits. It is understood that neither party admits identity of any negroes in declarations or mortgage. No understanding or agreement not signed by the parties is to be considered as binding. Depositions of Brown may be withdrawn, and his testimony and Miligan's to be taken, if deemed fit, by plaintiff, provided Brown's depositions, now taken, are returned to court, and which either party may use if they think fit, if legal testimony. Felton's testimony to be retaken by defendant, if he deems it necessary, provided the first depositions are returned to the court on trial. Plaintiff is willing to waive any objection as to any formalities on the envelope of Felton's depositions, now of file.

A. G. SEMMES,
*Plaintiff's attorney.*
R. J. MOSES.

December, 1846.

December 14th, 1848.

It is further agreed that the paper of 16th day of March, 1842, signed and sealed by A. T. Bennett and R. J. Floyd, and witnessed by J. C. Harris and J. M. Teague, deceased, shall be read without proof of handwriting, of witnesses or parties in all the cases in Franklin county in which Farish Carter is a party.

A. G. SEMMES,
*Plaintiff's attorney.*
BROCKENBROUGH,
*For Carter.*

Plaintiff, by counsel, here rested his case. Defendant, by counsel, then opened his case to the jury, and read the following evidence:

1. Agreement of counsel, December, 1846, inserted above as the fifth piece of plaintiff's evidence.

2. The following original mortgage of Warren Jordan to the Georgia Railroad and Banking Company:

GEORGIA, *Hall county.*

Whereas an arrangement was entered into on the 28th day of December, in the year eighteen hundred and thirty-eight, by and between

Warren Jordan, of said county, and the Georgia Railroad and Banking Company, whereby a loan of twenty-five thousand dollars was extended by said company to the said Warren, on his note for that amount, dated the day and year aforesaid, payable one hundred and eighty-four days after date, to the order of, and endorsed by, Reuben Thornton, of said county, and secured by a mortgage of even date on the property hereinafter described, (with the exception of lot No. 285. in the second district of Baker county, in this State, containing 250 acres of land,) which said note, it was agreed, should be renewable every six months, after the first day of January, 1839, so as to be made to fall due on the first days of July and January in each year for five successive years, from and after the said first days of July and January, or on the first discount days of said bank succeeding the said first days of July and January, 1839, subject to a reduction of 10 per cent. at each renewal, or 20 per cent. annually, as the said bank might thereafter require; the whole amount of the twenty-five thousand dollars to be paid by the expiration or within the limits of five years as aforesaid, from the said first day of January, 1839, together with all interest and expenses that might be required by said bank at each renewal, in accordance with its rules and regulations, not to exceed the rate of 8 per cent. per annum. And whereas, in accordance with the said arrangement, the said Warren renewed his said note, so given as aforesaid for $25,000, by giving a new one, with the same endorser, to the said Georgia Railroad and Banking Company, on the first day of July, 1839, payable six months after date, for $22,500, and paying the reduction and interest required by the bank. And whereas, it being now discovered that there has been an omission to record the said mortgage, and that the time allowed by the statute of the State for that purpose has elapsed, the parties have agreed to remedy the omission by the execution of a new mortgage of the same property, with the addition aforesaid, and the due record thereof, for the security of the said note of $22,500, now remaining in said bank, and of all other notes that may be given in renewal thereof, or of each other, and of the interests and costs that may accrue on the same. To these ends, therefore, this indenture, made and entered into this 30th day of October, in the year of our Lord 1839, by and between the said Warren Jordan, of the first part, and the said Georgia Railroad and Banking Company of the second part, witnesseth, that the said Warren Jordon, for and in consideration of the premises, and the sum of ten dollars, to him in hand paid by the said Georgia Railroad and Banking Company at the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained and sold, and by these presents doth give, grant, bargain and sell, to the said Georgia Railroad and Banking Company the following land, town lots and negroes, to wit, fifteen hundred acres of land immediately adjoining the town of Gainesville, in the said county of Hall, and State aforesaid, comprising lots Nos. 149, 150, 152, 153, 167, 168, and parts of lots 154 and 136, forming

one body, lying on both sides of Flat creek, adjoining lands of Cooper, Daniel, Mitchell, and others; together with all the various buildings thereon, comprising six dwelling houses, and a great variety of other houses necessary for the different lots and settlements thereon; which said tract of land is the one whereon the said Warren now resides. Also the following improved lots in the town of Gainesville, to wit, part of 11 and 12, with storehouse and improvements thereon, fronting on the public square, adjoining property belonging to Rivers on the north, and Brown on the south; lot No. 28, with the buildings and improvements thereon; also 300 acres of land in the 2d and 3d districts of originally Early, (now Baker county,) in said State, comprising six lots on the Colewake creek, known as Nos. 271, 272, 273, 274, 275, and 286, adjoining Dennard, John Taylor, and others. Also on Chickasalratchn creek, No. 180, 179, 219, 220, 224, all in the second district, and 181 in the third district aforesaid, which said lots or tracts of land were conveyed by Jerry Cowles to the said Warren Jordan. Also lot No. 285, in the second district of said county of Baker, containing 250 acres. Also the following negroes, to wit, Davy, (carriage driver,) Albert, house servant, Richard, shoemaker, Cato, Ben, Coon, Charles, Billy, Tom, Abram, Allen, Henry, Ivey, wagoner, Jeffrey and Horace, Jack, Toin, superior house carpenter, Amos and Moses, good house carpenters, and Lane, making 24 fellows. Also Isaac, Americus, Elias, Starling, Tom, and Rica, six lads nearly grown. Susan and her eight children, as follows: Mariah, grown, Amelia, nearly grown, Rica, plough boy, Edenboro, Charlotte, Pompey, Sarah and William, Narcissa and her 4 children, Washington, Olive, Darby, and Clement, Rachael and her two children, Ally and Grandison, Martha, a grown woman, Dafney and Nancy, two women, Jainey and her child Caroline, Dianah and her 4 children, Irene, Antoinette, Marcus, and Amarilla, Penny, a woman, Patty and her child, Rose and her 7 chileren, Clarissa, Joe, Emeline, Camilla, Ellen, Araminta, and Angeline, two Sarahs, women, Patsey, a valuable cook, Mary, house servant and seamstress, Sarah, cook and washer, Fada and Rhoda, two women, Harriet and her two children, Frances and Monroe, Siller and her child Major, Gilbert, Ferrel and Andrew, three lads; together with all and singular the rights, members, and appurtenances to the said lands belonging or in any wise appertaining; to have and to hold all the above bargained property to the only proper use, benefit, and behoof of the said Georgia Railroad and Banking Company, their successors and assigns forever, in fee simple. And the said Warren, for himself, his heirs, executors, administrators, the above bargained property unto the said Georgia Railroad and Banking Company, will forever warrant and defend against the claims of all persons whomsoever: Provided, nevertheless, that if the said Warren Jordan, his heirs, executors, and administrators, shall well and truly attend to the renewal of the said note for $22,500, now remaining in the said Georgia Railroad and Banking Company, at their office or banking house in Athens, and of all notes that may be given in renewal thereof and of each other, and

punctually pay all reductions and discounts which shall become due thereon according to the true intent and meaning of these presents, so as to complete the payment of the whole $25,000 originally borrowed by the said Warren from the said company within the five years as above specified, from the first day of January, 1839, together with all interests, costs and charges of any kind, that may arise from any defalcation, so to do or cause the same to be done, then and from thenceforth, as well as this indenture and the right of property thereby conveyed, as the said note now renewing as aforesaid, and all others given in renewal thereof or of each other, shall cease, determine, and be void to all intents and purposes; but in default thereof, according to the plain tenor and meaning of these presents, the said Georgia Railroad and Banking Company shall have the right, and is hereby vested with the power, of foreclosing this mortgage, according to law, and to sell so much of the property hereby conveyed as will satisfy all legal demands of the said Georgia Railroad and Banking Company against the said Warren Jordan, growing out of his defalcation or failure to comply with the conditions and requirements of this mortgage, and after paying all the principal, interest, cost, and charges on the same, that he, the said Warren, may, by law, be held liable and responsible for. The balance, if any, shall be paid over to the said Warren, or to his legal representatives, and the balance of the property not sold shall likewise be immediately [turned over] to the said Warren or to his legal representatives, reconveyed by the said Georgia Railroad and Banking Company.

In witness whereof the said Warren Jordan hath hereunto set his hand and seal, this said 30th day of October, 1839.

WARREN JORDAN. [SEAL.]

Signed, sealed, and delivered in presence of—
REUBEN THORNTON,
GEORGE MERCH, J. P.

GEORGIA.

Recorded in clerk's office, Hall superior court, book E, 261 to 263.
(Signed) E. M. JOHNSON, *Clerk.*
October 31, 1839.

GEORGIA, *Clark county.*

This is to certify and make known, that E. M. Johnson, who has subscribed the foregoing certificate of this mortgage, having been recorded in the clerk's office of the superior court of Hall county, (which said county is in the western district,) is the clerk of said court, and that the said certificate is in his handwriting, and that full faith and credit is due to his attestation as such, and that certificate is in due form.

(Signed) JUNIUS HILLYER, [L. S.]
*J. S. C. W. D.*

March 28, 1842, witness my hand and seal, as judge of the western district, Georgia.

Registered in the clerk's office of the superior court of Baker county, in book 7, on pages 181, 182, 183, 184, 185, and 186, the 16th day of December, 1839.

MAHLON BEDELL, *Clerk*.

Fi. fa. on personal property issued 5th July, 1842.

SAMUEL H. WILSON, *Clerk*.

The original of this mortgage withdrawn by order of court. Entered 17th December, 1842.

GEO. F. BALTZELL, *Clerk*.

3. He next offered the following original notes, purporting to be drawn by W. Jordan, and endorsed by Reuben Thornton, both dated July 1st, 1841; the one for fifteen thousand dollars, payable six months after the date thereof, and the other for six hundred and twenty-seven dollars, payable also six months after the date thereof; which notes, and endorsements thereon, are in the following words and figures, to wit:

$15,000. *Copies.*

Six months after date, I promise to pay to the order of Reuben Thornton, at the bank of the Georgia Railroad and Banking Company, in Athens, fifteen thousand dollars, value received.

WARREN JORDAN.

July 1, 1841. Noted and protested for non-payment.

W. D. F., *N. P.*

January 4, 1842, endorsed—

REUBEN THORNTON.

$627 00.

Six months after date, I promise to pay to the order of Reuben Thornton, at the bank of the Georgia Railroad Bank, at Athens, six hundred and twenty-seven dollars, value received.

WARREN JORDAN.

July 1, 1841. Endorsed—

REUBEN THORNTON.

Noted and protested for non-payment, January 4, 1842.

W. D. T., *N. P.*

I, George Baltzell, clerk of the superior court of Franklin county, Florida, do hereby certify, that the above are true copies of the originals, withdrawn by order of court in the case of F. Carter, assignee Georgia Railroad and Banking Company vs. Warren Jordan, on petition to foreclose mortgage, this 9th January, 1843.

GEO. F. BALTZELL, *Clerk*.

[Originals were in court.]

Received the originals of the within copy. Notes by order of court.

R. J. MOSES,
*Attorney for Farish Carter.*

Dec. 26, 1845.

Which said notes, upon motion of plaintiff's counsel, were ruled out by the court, upon the ground that they did not appear to be the debt of the mortgage, (before the necessity of proving handwriting,) and not allowed to be read in evidence; to which ruling defendant, by his counsel, excepted.

4. The defendant then read the following assignment of said mortgage above recited, from said Georgia Railroad and Banking Company to Farish Carter.

GEORGIA:

Know all men by these presents, that the Georgia Railroad and Banking Company, for and in consideration of the sum of sixteen thousand one hundred and thirty-six dollars and thirty-nine cents, to them paid by Farish Carter, esq., of Scotsboro', in said State, at or before the delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, assigned, set over, and by these presents do bargain, sell, grant, assign, and set over, unto the said Farish Carter, his heirs, and assigns, a certain mortgage deed, entered into on the thirteenth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, between Warren Jordan, of Hall county, in said State, as mortgagor, and the said Georgia Railroad and Banking Company, as mortgagees; which said mortgage deed was recorded, on the day and year aforesaid, in the clerk's office of the superior court of said county, in book E, folios 261 to 263; and, on the sixteenth day of December, in said year, in the county of Baker, in said State, in the clerk's office of the superior court of the said last mentioned county, in book 7, pages 181, 182, 183, 184, 185, and 186, as by reference thereto will appear, together with the lands and negroes, houses and buildings, thereon mentioned and described, with the rights, members, and appurtenances thereunto belonging, and all the estate, right, title, and interest of the said Georgia Railroad and Banking Company therein; to have and to hold all and singular the premises hereby granted and assigned unto the said Farish Carter, his heirs and assigns, forever, without recourse, in any event, to the said Georgia Railroad and Banking Company; subject, nevertheless, to the rights and equity of redemption of the within named Warren Jordan, his heirs and assigns, in the same.

In witness whereof, John P. King hath signed these presents as president, and James Camak hath countersigned the same as cashier, of the said Georgia Railroad and Banking Company, and affixed the

seal of the said corporation hereto, this thirty-first day of May, in the year of our Lord one thousand eight hundred and forty-two.

JOHN P. KING, [SEAL.]
*Prest. Ga. R. R. & B. Co.*

Signed by the said John P. King, president, in our presence—
W. H. MAHARREY,
JOHN W. WILDE,
*Notary public.*

JAMES CAMAK,
*Cashier, Georgia R. R. and B. Co.*

Countersigned by the said James Camak, as cashier, and the seal of said corporation hereto affixed in our presence, the word "State" being first interlined on the first page.
JOHN REYNOLDS,
W. D. FULLTON,
*Notary public.*

5. Defendant next read the following deposition of Reuben Thornton. Plaintiff objected to introduction of said depositions, and overruled by court.

*Interrogatories to be propounded to Reuben Thornton, a material witness for the defendant in this action.*

1st interrogatory. Do you know the parties?

2d. State what you know of a mortgage given by Warren Jordan to the Georgia Railroad and Banking Company, and by them assigned to Farish Carter; and what negroes were and are embraced in the same.

3d. Do you or do you not know that all the negroes therein stated were the bona fide property of the said Warren Jordan at the date of the said mortgage, and were you a subscribing witness thereto?

4th. Look at the list of negroes appended to this interrogatory, and state whether they were the same negroes mortgaged by said Jordan to said Georgia Railroad Company; name those that you identify distinctly. State what negroes you saw in the possession of the marshal of the Appalachicola district, and what negroes did he sell at public sale at Appalachicola, under a judgment rendered in Franklin superior court, in favor of said Georgia Railroad Company, use of Farish Carter.

List of negroes, as sold at marshal's sale: Rica, Tom, Charles, Elias, Pink or Ginsey, and her two children; Dinah and her four children, to wit, Antoinette, Amarilla, and two small ones, Tom and Sarah; Clarissa, Camilla, Nancy, and her child, Ellen; Sam, Jeffrey, Isaac, Allen, Cato, John or Jack, Joe, Amos, Patsy, and child, Sally; Andrew, Albert, Irene, Jane, and her child.

State all you know that will benefit the defendant.

GEORGE S. HAWKINS,
*Attorney for Carter.*
WM. H. BROCKENBROUGH.

*Cross interrogatories for Reuben Thornton, to be taken in Appalachicola, Florida.*

1st. Are you in any respect interested in this suit, or any of the suits in favor of Farish Carter or Richard H. Long?

2d. If said Carter should recover in any of the suits against Bennett, are not the proceeds of said recovery, or some portion thereof, to go to yourself, or to some member of your family; if yea, to whom?

3d. Are you not under engagements or contract with Farish Carter, to assist in prosecuting the suit or suits against Bennett, and are you not, agreeable to said engagement, contract, or understanding, to furnish testimony in behalf of said Carter? Please state distinctly what your engagement, contract, or understanding with said Carter in relation to these suits, or any of them, is.

4th. State what portion of the negroes, or what compensation are you allowed, or to be allowed, for assisting said Carter in the prosecution of these suits, or any one of them; and what portion of the negroes, or what compensation is any member of your family allowed, or to be allowed, for your services in furnishing testimony and assisting said Carter in the prosecution of these suits, or any of them?

5th. Have you had any conversation with said Carter since the foreclosure of said mortgage, in regard to assisting him in the prosecution of these cases, or any of them, or in regard to your furnishing evidence in his behalf? Have you made no propositions to him or his agents in relation to the foregoing, and state what they were.

5th. Did you, directly or indirectly, have any agency in having said suits, or any of them, against said Bennett, James F. Farrior, and Robert J. Floyd, or either of them, instituted in the superior court of Franklin county?

6th. Do you not know that said Carter had no agency in instituting said suits, or any of them, or have you not good reasons for believing that said suits were instituted without the knowledge of said Carter?

7th. In the event the suits are dismissed, or in the event said Carter fails in a recovery, is it not understood that you are to pay the cost of the same? Do you not so understand the matter?

8th. Did you not directly or indirectly instruct the attorneys for said Carter to institute suit or suits against said Bennett, said Farrior, and Floyd, or either of them? And state whether you have not engaged the services of one or more attorneys in regard to prosecuting said suits or either of them. If in your instructions to institute said suit or suits, or prosecute the same, or in consulting with attorneys in regard to the same, you are acting as agent for any one, state for whom.

9th. Is your brother, Charles T. Thornton, in any way directly or indirectly connected with the said suits or any of them, or in any way directly or indirectly interested in the same, or any member of your family, and whom?

10th. Have you not stated in Appalachicola that you had the entire control and disposition of the said suits, or any of them, or words to that effect?

11th. Have you not stated in Appalachicola that you could have said cases, or any of them, dismissed at any time at your pleasure, or in words to that effect?

12. State have you not offered to said Farrior and Bennett, or either of them, to dismiss said cases, or any of them, if said Bennett and Farrior would pay their indebtedness to your brother Charles T. Thornton?

13th. Have you not stated that if said Farrior would pay you his liability on the $1000 draft or bill of exchange, and his liability on the $7000 note, that you would have said cases against him dismissed?

14th. Have you not stated that if said Farrior would pay his said liability, you could and would place it out of the power of said Carter ever to succeed against said Farrior in any suit he might institute for the recovery of negroes sued for?

15th. Have you not stated frequently, that it would be greatly to the interest of said Bennett and Farrior, or either of them, to settle their said liabilities; that they would save themselves from a recovery by said Carter, and otherwise be greatly benefitted, or words to that effect?

16th. State have you not held out to said Farrior and Bennett, or either of them, inducements to settle with you, and state particularly what these inducements were, and whether it was not understood and proposed by you that a settlement of said suits should be included in your settlement with them?

17th. Did you not settle with said Robert J. Floyd, as to his liability on said note of $7000 and said draft of $1000, and was it not made a condition to said settlement that the suits against him were to be dismissed? State the terms and conditions of said settlement, and if you have the same annex a copy hereto, as well as your agreement with said Floyd in relation to his future liability for and on account of said negroes, or any of them?

18th. Were suits instituted against said Floyd in the name of said Carter on account of these negroes, or any of them? If yea, did you have any agency, directly or indirectly, in dismissing them.

19th. If you state that no suits were instituted against said Floyd, state whether it was not on account of his settling with you. Did you give any instruction or direction to the attorneys of said Carter not to sue said Floyd, on account of his having settled with you, or any instructions or directions?

20th. Are you, or any member of your family, (and who,) directly or indirectly interested in the equity of redemption of the property mortgaged in the State of Georgia under said referred to mortgage?

21st. Are you directly or indirectly interested, or any member of your family or your connexions, (and who,) in having the said mortgage debt paid off and discharged?

22d. Are you directly or indirectly interested, or any member of your family or connexions, (and who,) in releasing said mortgaged property in the State of Georgia?

23d. Have you not repeatedly stated that your interest and that of your family were so much at stake in regard to the said mortgaged pre-

mises and property in the State of Georgia, as to cause you to move from said State to the State of Tennessee, for the express purpose of instituting suit in the United States court against said Carter, for and on account of matters connected with said mortgaged property, or words to the same effect? State fully and particularly.

24th. Previous to the said mortgage being foreclosed in Franklin county, state whether the real estate embraced in said mortgage in the State of Georgia had been sold under any decree of foreclosure of said mortgage, and state whether a judgment of foreclosure had been had in Georgia previous to said foreclosure in said Territory.

25th. State whether the lands embraced in the said mortgage, situate in said State of Georgia, has been sold under and by virtue of any judgment or decree on said mortgage. If yea, when and where?

26th. If the real estate or any part thereof embraced in said mortgage was ever sold, state what portion was sold, at whose instance, and whether the sale was not under a lien subsequent to that of said mortgage. State fully and particularly all in relation to it, and whether said real estate or some part thereof was not sold at the instance of said Carter under a junior lien or claim to that of said mortgage, the said Carter being at the time the assignee and holder of said mortgage, or what were the facts. And state whether, by reason of said sale and the said prior incumbrance of said mortgage, said real estate was not bought in by said Carter, or some one else, at a price much below (and how much) the value of said property, and what it would have brought in a fair and open market.

27th. How much of said real estate embraced in said mortgage in the State of Georgia now remains unsold, or how much remained unsold at the time said mortgage was foreclosed in said county of Franklin; where does this real estate lay, and what is its value? State fully and particularly.

29th. State are you not very unfriendly to said Bennett; have you no hostile feelings to him? State have you not repeatedly said that if Bennett and said Farrior did not settle their indebtedness on said $1,000 draft and said $7,000 note, that you would make them pay dearly for the negroes they still had, or words to that effect. State distinctly what you did say and threaten said Bennett and Farrior, or either of them, in regard to this matter.

30th. Where did Warren Jordan reside in the State of Georgia, and where did you reside; was there much intercourse between you and his family?

31st. If you were present at the marshal's sale referred to in direct interrogatories, annex to your answer a copy of the marshal's notice of sale, or if you have not one, state the names, ages, complexion, and sexes of the negroes said marshal sold.

32d. When was it that you purchased of Warren Jordan the negro slaves alluded to in direct interrogatories, what is the date of said bill of sale; who were the witnesses to it, and what was the consideration; did any money pass from you to said Jordan at the time said bill of

sale was delivered to you; did you not deliver to one Harris, who had charge of said negroes, a note from Warren Jordan, requesting said Harris to deliver said negroes to you, and that he had sold them to you?

33d. Did you not, after arriving in Appalachicola, offer said negro slaves for sale to one Wiley Mason, and several others, representing that they were your bona fide property; did you not, previous to the sale to Bennet and Floyd, endeavor to replevy said negro slaves under the attachment then existing against them in favor of the Central Bank of Georgia, with a view of running said slaves beyond the jurisdiction of Florida to Texas, or elsewhere?

34th. Did you not, in selling to Floyd and Bennett, deliver to them your bill of sale from Warren Jordan; how much money have you received altogether from Floyd and Bennett for the purchase of the negroes?

35th. After the petition was filed for foreclosure of mortgage in favor of the Georgia Railroad and Banking Company against Warren Jordan, in Franklin superior court, and after the assignment had been made to said Carter, did you not interest yourself in behalf of said Carter in his proceedings to condemn these negroes as subject to said mortgage; did you not proffer to said Carter all your aid and assistance in such proceedings, and did you not aid and assist him in the same? And state what was the contract, engagement, or understanding between you and said Carter in relation to this matter.

36th. Had you no conversation, no engagement, or no understanding with said Carter in relation to said proceedings, and in relation to the aid and assistance you were to render him in condemning this property? State fully.

37th. Did you not come from Georgia at the time referred to, purposed and with a view of assisting said Carter in condemning said property; did you not bring with you a power of attorney from Warren Jordan, with the view and design of facilitating and assisting said Carter in his suit?

38th. Did you not represent yourself as the authorized attorney of Warren Jordan, fully empowered to confess judgment in said mortgage suit, and waive any and all rights which he as defendant had under the laws; was the power of attorney under which you acted filed in said court?

39th. Did you, as attorney as aforesaid, confess judgment in said suit for foreclosure of this property, or waive any other, and what other rights; where and when was this confession made, and was said Carter present?

40th. Were you knowing to the attachment being granted in said suits against the negroes then in possession of Bennett? If yea, state were you present when it was granted. If yea, when was it, and what time. If at night, at what hour. Do you know of the said attachment being served on said negroes? If yea, state were not the said negroes at the residence of said Bennett in Appalachicola. How

many were drafted or volunteered to assist in serving the said attachment; at what hour in the night did they proceed to Bennett's house; were the persons engaged in the service armed; do you know whether said Carter assented to and advised this proceeding; do you not know that his directions were to seize the negroes that night? State fully what you do know in relation to this matter.

41st. Did you not, previous to and on the day of the sale of the said negroes by the marshal, take an active part, and with a view of inducing purchasers, repeatedly state that your title to Bennett and Floyd was worthless, and that the title of the marshal under the sale would be perfect and complete?

42d. State whether all the zeal, perseverance, and industry you have manifested in behalf of said Carter, in relation to condemning said negroes as subject to said mortgage, was the result of pure disinterestedness on your part, or with a view of subserving the ends of truth and justice only, or with a view of paying off said Jordan's indebtedness on said mortgage, and relieving the other mortgaged property in the State of Georgia; and does Warren Jordan and his family alone reap the fruits of your labor in this matter; what connexion is said Jordan to you; is your daughter and her children not now living; does not Charles T. Thornton, your brother, now hold the note of $700[0] and the draft of $1,000, given by Bennett and Floyd as part payment of the said negroes, in trust for your said daughter and her children; and is he not now prosecuting suits thereon, and are you superintending, aiding, and assisting him therein?

43d. State did you not, within a few days since, learn that there was at that time a prospect of said Bennett and Carter amicably settling their several claims and adjusting these suits? And did you not then state, in the city of Appalachicola, that no settlement between them embracing these suits should be made without your being a party, and without said draft of $1,000, and said note of $7,000 being paid; that you had a word to say in regard to these suits, and that your interest in the matter should not be jeopardized or affected by any negotiation or settlement with said Carter and Bennett? If the foregoing are not your precise words, state fully and particularly what you did state on the occasion referred to.

A. G. SEMMES,
*Attorney for Bennett.*

By virtue of, and in obedience to, a commission addressed to us by the judge of the superior court of Franklin county, Territory of Florida, we have caused Reuben Thornton, a material witness in this case, to come before us, and after being duly sworn true answers to make to the interrogatories to the said commission annexed, he answers as follows, to wit:

1st interrogatory. He answers, that he knows both parties well.

2d interrogatory. He answers, that a mortgage was given by Warren Jordan to the Georgia Railroad and Banking Company on a con-

siderable quantity of real estate, and upwards of eighty negroes, to secure the payment of a note of twenty-five thousand dollars, then running or about to run in said bank, and which was to be renewed and paid by instalments of twenty-five hundred dollars, together with the interest due, every six months, until the whole was paid. That twenty-five hundred dollars of the principal, and the interest at that time due was paid, when it was discovered that the mortgage had not been recorded within the time prescribed by law; whereupon it was determined to execute a new mortgage on the same property to secure the payment of the balance of twenty-two thousand five hundred dollars then due, and payable in like manner as before mentioned. That in writing off the second mortgage, which cites and recognises the first, some six or eight of the names of the negroes were accidentally and unfortunately omitted, which were embraced in the first, and intended to be inserted in the second; that the notes were renewed and the reduction and interest paid on last mortgage until the principal was reduced to fifteen thousand dollars, with some six or seven hundred dollars for interest; a note for which fifteen thousand dollars was executed to the bank, and a separate note for the interest, which two notes, together with the mortgage, he believes was assigned by the said bank to Farish Carter, the defendant; that the said mortgage was executed and bears date on or about the 30th day of October, 1839, and embraced the following negroes, to the best of his recollection, which is aided by a memorandum of the names of the negroes now in his possession, and which was taken from the record book in which said mortgage is recorded in the county of Hall, State of Georgia, to wit: Davey, Albert, Cato, Richard, Ben, Coon or Jack, Charles, Billy, Tom, Abram, Allen, Henry, Ivey, Jeffrey, Horace, Jack or John, Tom, Amos, Moses, Sam, (written in error Land,) Isaac, Americus, Elias, Starling, Tom, Rica, Susan and her eight children, Maria, Amelia, Rica, Edenboro, Charlotte, Pompey, Sarah, and William; Narcissa and her four children, Washington, Oliver, Darbey, Clement; Rachel and her two children, Abby and Grandison; Martha, Daphney, Nancy, Jinney and her child Caroline; Dinah and her four children, Ireeny, Antoinette, Marcus, and Amarilla; Polly (written Patty) and her child; Rose and her seven children, Clarissa, Joe, Emeline, Camilla, Ellen, Araminta, Angeline, two Sarahs, old woman Patsey, Mary, Sally, Fada, Rhoda, Harriet and her two children, Francis and Monroe; Cilla and her child Mason; Gilbert, Ferrel, and Andrew.

3d interrogatory. He answers, that all the negroes embraced in the mortgage, and as enumerated in the last answer, were the bona fide property of Warren Jordan, and in his possession at the time of the date of said mortgage, except two, Albert and Patsey, which were also in his possession at the time, but has since been discovered to have been bequeathed by Mildred Dudley, deceased, late of the county of Spotsylvania, in the State of Virginia, by her last will and testament to Anthony R. Thornton, in trust for the benefit of his own and the wife of Benjamin G. Thornton and their children. He further an-

swers, that he was a subscribing witness to said mortgage to the best of his recollection and belief.

4th interrogatory. He answers, that he has examined the list of negroes appended to the interrogatories, and finds that the names therein set forth are the same that are contained and specified in the mortgage made by Warren Jordan to the Georgia Railroad and Banking Company, except the following, to wit: Jinsey or Pink and her two children; Jane and her child; and that said two negroes, Jane and Jinsey, together with their children, were also the property of Warren Jordan, and taken fraudulently from the possession of his agent, Jeptha C. Harris, in the town of Appalachicola; that he saw in the possession of the marshal of the Appalachicola district the following negroes, to wit: Rica, Tom, Charles, Elias, Jinsey or Pink and her two children, (names not recollected;) Dinah and her four children, Antoinette, Amarilla, the names of the two youngest not recollected; Tom, old man; Sarah, old woman; Clarissa, Camilla, Nancy and her child, name not recollected; Ellen, and Sam, all of which he saw sold by the said marshal, on the 31st day of December, 1842, at public sale, in the city of Appalachicola, under a general execution which issued from Franklin superior court, in favor of Farish Carter, assignee of the Georgia Railroad and Banking Company vs. Warren Jordan; all of which said negroes were bid off by Colonel Richard H. Long; and that he also saw in the possession of the said marshal, at the same time, the following negroes: Jeffrey, Isaac, Allen, Cato, John or Jack, Joe, Amos, Patsey and child, William Henry; Sally, Andrew, Albert, Ireny, Jane and her child Henry, which were also sold by the marshal in like manner as the first mentioned parcel were, and under the same execution, on the 9th day of January, 1843; all of which were purchased by the said Richard H. Long, except Jeffrey and Ireny, which were bid off by Judge Spann, and immediately passed into the possession of Bennett, the plaintiff. He further answers, that he was well acquainted with the persons of Rica, Tom, Charles, Elias, Ginsey or Pink, Dinah, Tom, Sarah, Clarissa, Nancy, Sam, Jeffrey, Isaac, Allen, Cato, John or Jack, Joe, Amos, Patsy, Sally, Andrew, Albert, Ireny, and Jane, and know them all to be the property of Warren Jordan, except Albert and Patsey, as before mentioned, and excepted in the answer to the third interrogatory, as subject to the will of Mildred Dudley; that the balance, being young negroes and children, he was not so well acquainted with their persons, but believes them to be the children of the older negroes, who he knew personally, as above mentioned.

To the last interrogatory he answers, he knows of nothing more that will benefit the defendant, except what will be necessarily answered to the cross interrogatories.

*Answer to cross interrogatories.*

1st cross interrogatory. He answers, that he is in no way personally

interested in any of the suits in favor of Farish Carter or Richard H. Long.

2d. He answers, that he has no knowledge that any thing which may be recovered by Farish Carter, or any portion of it, will go to himself, or any member of his family; that he is under no engagement or contract with Farish Carter to furnish testimony, for the purpose of aiding him in prosecuting any of the suits against Bennett, to which these interrogatories refer, so far as he recollects or believes. Nor has he any engagement, or contract, or understanding with said Carter in relation to any of the suits now pending, further than, as the agent of Warren Jordan, it may become his duty legally to aid in the prosecution of any suit which may affect the interest of his estate; that the suits of Bennett vs. Carter and Long, he does not conceive involves the interest of Warren Jordan's estate in the slightest degree, or that they are affected by any arrangement or agreement ever entered into between himself and Carter, farther than by fulfilling a verbal promise made to him to answer these interrogatories before he left Appalachicola, if presented to him in time to do so, and also to take the interrogatories for Felton, and have them executed, which would have been done, as an act of courtesy, but under no contract or agreement, but for the failure on the part of Col. Semmes to cross the interrogatories in time, as he promised to do, to enable him to write out the voluminous answers necessary to be made to such an unusual string of impertinent questions.

4th. He answers, that no portion of the negroes, or any other compensation, is promised or allowed to any member of his family, so far as he is apprised, for assisting said Carter in prosecuting any suit or suits now in existence, as far he recollects or believes.

5th. He answers, that he has had various conversations with Carter since the foreclosure of the mortgage, and upon so many subjects connected with the negroes belonging to the estate of Warren Jordan, that he cannot distinctly say what they were; that he has no recollection of ever having made any proposition to Carter, or to his agents, in relation to any suits now pending between the parties, except to propose to his counsel to dismiss the suit against Floyd, which they were induced to do, upon his explaining to them that, as the agent of Warren Jordan, he could, in a general settlement with Carter, as his creditor, make it equally his interest otherwise. He further answers to the next interrogatory, also marked

5. That he has not, in his own right as an individual, had any agency, directly or indirectly, in having said suits, or any of them, brought against Bennett, Farrior, or Floyd, nor has he had any other interest or agency in reference to said suits, further than as the agent of Warren Jordan. He may have felt himself bound to protect the estate generally by all legal means, for the benefit of his creditors and his family.

6th. He answers, that he does not know that Carter had an agency in instituting said suits, nor has he any good reason to believe that they were brought without his knowledge; on the contrary, he believes they

were brought with the knowledge of Carter, and by his authority given to his counsel for that purpose.

7th. He answers, that he has nothing to do with the suits as an individual, nor does he understand or conceive that he can be implicated in the costs of said suits in any event whatever, whether by a failure to recover, or a dismissal of the suits, and that he does not understand the matter in any other way than above expressed.

8th. He answers, that he has no recollection of giving any instructions to Carter's attorneys to bring any suits against Bennett, Farrior, or Floyd, in Carter's name, and never engaged the services of any attorney to prosecute said suits. That he again answers as he did to the 5th cross interrogatory, that he has no other interest or agency in connexion with, or reference to said suits, than as the agent of Warren Jordan, for the protection of his estate.

9th. He answers, his brother, Charles T. Thornton, is not, directly or indirectly, interested in, or connected in any way with said suits, neither is any member of his family, nor does he believe they ever heard of any such suits; the creditors of Warren Jordan, and those legally interested in his estate, are the only persons he knows of that are interested in said suits.

10th. He answers, that he does not distinctly recollect what he may have said in Appalachicola on that subject; but if understood to have said what this interrogatory purports, that he was grossly misunderstood; that he may have said, and now says, as he answered to the 5th cross interrogatory, that, as the agent of Warren Jordan, he could, upon a general settlement with Carter, as his creditor, extend to him an advantage equal to any he could by a dismissal of these suits, and so satisfied his counsel.

11th interrogatory. He answers, that he does not recollect any precise statement he may have made; that this interrogatory is fully answered by reference to his answers to the 5th and 10th cross interrogatories.

12th. He answers, that he would have settled with Bennett and Farrior, as the agent of Charles T. Thornton, upon the same terms that he settled the joint indebtedness of Floyd in the same cases, and would have procured the dismissal of these suits against them, as was done against Floyd, and in the same manner as already explained in his answers to the 5th and 10th cross interrogatories.

13th. He answers the same as to the 12th cross interrogatory.

14th. He answers, that he has no recollection of ever having stated that he could or would place it out of the power of Carter ever to recover against Farrior in any suits he might institute for the recovery of the negroes sued for; that he offered to Farrior in the presence of his counsel, A. G. Semmes, that if he would pay what he acknowledged to be his proportion of this debt, he was then sued for by Charles T. Thornton, that he would have the suits then pending against him in favor of Farish Carter dismissed in like manner as had been done with Floyd, and would also release him from any further liability on the

$7000 note as the endorser thereon, provided he obtained Bennett's consent to such release; that Farrior's counsel, Col. Semmes, also required that he should give to Farrior an obligation that Carter would not make any further efforts for the recovery of said negroes; to which he peremptorily refused, and stated to Col. Semmes that he had no authority to bind Col. Carter, or any other creditor of Warren Jordan, from pursuing their undoubted rights if they chose to do so; to which Col. Semmes replied, that he could not advise his client to settle the matter under such circumstances, and broke off the negotiation.

15th. He answers, that he has stated it as his opinion frequently, that it would be greatly to the advantage of Bennett and Farrior to settle the claims he was attending to as the agent of Charles T. Thornton, and that by so doing they would in his opinion greatly increase the chances of contending successfully against Carter and the other creditors of Warren Jordan, by his being out of the way, as important testimony in their favor could not be so readily obtained, if he was entirely out of the way, or removed to a considerable distance as it could be if they kept him constantly on the spot attending to the collection of these claims; that he is yet of the same opinion, and that Col. A. G. Semmes, their counsel, has frequently agreed with him in opinion on this point, and has more than once positively agreed to settle those claims on the part of his clients, since his first refusal to do so, as stated in his answer to the 14th cross interrogatory, which agreements have been as often violated on their part.

16th. He answers, that this interrogatory is fully answered in the answer to several other of the cross interrogatories.

17th. He answers, that he settled with R. J. Floyd as the agent of Charles T. Thornton, for one-fourth part of the $7000 note, and one-half of the $1000 note, and also obtained the consent of Carter's counsel to have the suits against him for the missing negroes dismissed, as has already been stated in his answer to the 5th and 10th cross interrogatories; that he has no written agreement on the subject between himself and Floyd in his possession, and that the above is the sum and substance of the settlement between them, except that Floyd was also released from any further liability on the notes, by the consent of Bennett and Farrior.

18th. He answers, that this interrogatory is fully answered by the answer to the foregoing one and several others.

19th. He answers, that this interrogatory is also substantially answered in the answers to the 5th, 10th, and 17th cross interrogatories.

20th. He answers, that Warren Jordan, for whom he is acting as agent, is entitled to the equity of redemption to a considerable quantity of property in the State of Georgia included in the mortgage referred to, but neither himself or any member of his family has any interest therein or thereto.

21st. He answers, that Warren Jordan, for whom he is acting as agent, is interested in having said mortgage paid off, and that he knows

of no other connexion or member of his family that are interested in the matter.

22d. He answers, that himself nor any member of his family has any interest directly or indirectly in any of Warren Jordan's property, whether mortgaged or not, further than has been repeatedly and fully explained in former and foregoing answer. He further answers, that there are other mortgages and judgments against Warren Jordan that will cover any and all property released from the Georgia Railroad mortgage in the State of Georgia, or any where else that it can be found.

23d. He answers, that neither himself or family has any personal interest in the mortgaged premises or any other property belonging to the estate of Warren Jordan, and that he has repeatedly and uniformly asserted that they had none, and has no recollection or belief that he has ever made a contrary statement; that he does not distinctly recollect what he might have said relative to any contemplated suit or suits against Carter, but that he now says, and may have said so before, that he has removed to the State of Tennessee, and that he expects and intends to commence a suit in equity as the agent of Warren Jordan, against Farish Carter and Benjamin S. Jordan, for a general settlement of his estate, so far as it may have passed into their hands, unless he can obtain a satisfactory settlement otherwise, which suit, if brought, may or may not be brought in the federal court. And he further answers, that no suit in which Carter is connected in Florida has anything to do with those anticipated suits, except those he has commenced at Appalachicola against Bennett and Farrior for the negroes which were missing, as Warren Jordan's estate has no interest in or connexion with any thing else. He further answers, that if any such suits should, through necessity, be resorted to, that it will be for the benefit of the family and the creditors of Warren Jordan, and that neither himself or his family will derive any personal advantage therefrom.

24th. He answers, that no part of the real estate in Georgia, which is embraced in said mortgage, has ever been sold under any decree of foreclosure of said mortgage, and that no judgment had been obtained in Georgia on a foreclosure of said real estate, prior to the foreclosure of the mortgage in Franklin county; that a considerable quantity of the real estate embraced in said mortgage has been sold under other fi. fas., and that the mortgage is now foreclosing on the balance.

25th. He answers, that the answer to the 21th cross interrogatory is his answer to this.

26th. He answers, that a considerable quantity of real estate, which was embraced in said mortgage, was sold under execution in favor of St. Clair, and Robertson, and Alfred George, and others not now recollected, vs. Warren Jordan, in the county of Hall, and that Farish Carter became the purchaser of it for a sum not now recollected, but believes to be under its fair value; that said executions were younger than the date of the mortgage; that he has no knowledge that any of said

property was sold at the instance of said Carter, but believes, to the contrary, that it was sold entirely at the instance of others; that he believes said Carter was assignee of the mortgage at the time of the sale of said property, but cannot say so positively, as he was not present at the sale, and does not recollect or know when Carter became the assignee of the mortgage; that he cannot state how much below its value said property sold for, or what its real value was, as it was a description of property the value of which depended on so many circumstances that it would be difficult for any one to say what it was really worth.

27th. He answers, that something like three thousand acres of land in the county of Baker and State of Georgia, was embraced in said mortgage, and remained unsold at the time of the foreclosure of said mortgage in Franklin county; that he cannot state the value of said land, or what it would sell for, as the price of land in that quarter has reduced so much, and fluctuated so greatly, that he is at present in no degree apprised of its value sufficiently to fix any particular sum; that he is satisfied at sheriff's sale it would sell for little or nothing, unless run by other creditors, and that land in the same neighborhood of superior average quality has been recently sold at sheriff's sale from three to seven hundred dollars per lot of 250 acres, as he is informed by the gentlemen who purchased it, which is the best criterion he has of judging of its value, when forced into market for cash under the sheriff's hammer, and that the titles to several lots of the land has been questioned, and some of it may be lost, but to what amount he cannot say.

29th. He answers, that he is not sensible of entertaining, improperly, any unfriendly feelings towards Mr. Bennett; that he would disdain to do him an intentional injury even if it was in his power to do so; that he cannot, under the circumstances, and with his knowledge of the facts, view him strictly in the light of an honest and honorable man, and the only feelings he entertains for him beyond that of kindness, is pity and contempt, and even that in no greater degree than he honestly entertains for some of his counsel; that he has no recollection of ever having said, if Farrior and Bennett did not settle the $1,000 draft and $7,000 note, that he would make them pay dearly for the negroes they still had; that he has repeatedly said, as the agent of Charles T. Thornton, he would continue to pursue them under any and all circumstances, until he could compel them by law to pay off these claims fully, if they were worth it; or, in other words, which may frequently have been of a more severe character, yet of the plain meaning and import as above expressed.

30th. He answers, that both himself and Warren Jordan reside in the village of Gainesville in the State of Georgia, and that there was as much intimacy as usually exists between a father and an affectionate, intelligent daughter, between himself and the family of the said Warren Jordan.

31st. He answers, that he has no copy of the marshal's notice of the sale of the negroes, and the following are the names, age, complexion, and sexes of the negroes sold by the marshal, to the best of his recol-

lection, knowledge, and belief, to wit: On the 31st day of December, 1842, he sold Rica, a black boy about 18 years old; Tom, a black boy about 17 years old; Charles, a fellow nearly black, between forty and fifty; Elias, a young man, a little yellow, about twenty; Pink or Jinsey, a woman, slightly tawny, between twenty and thirty, and her two children, between one and five years old, (color dark,) names not recollected; Dinah, a woman, nearly black, between thirty and thirty-five, and her four children, to wit, Antoinette and Amarilla, two girls, between six and twelve years old, dark mulattoes, and two smaller children, names not recollected, about the same color; Tom and Sarah, two old negroes, black, and are man and wife; Clarissa, a black girl, about fifteen; Camilla, a black girl, about twelve; Ellen, a black girl, about ten years old; these last three are sisters; Nancy, a dark colored woman, about thirty, and her infant child, name not recollected; Sam, a black fellow, about forty, (mind not very good.) And on the 9th day of January, 1843, he sold Jeff, a black fellow, about forty; Isaac, a black fellow, about twenty-two or twenty-three; Allen, a dark fellow, about twenty-seven or eight; Cato, a black fellow, about forty; Jack, or John, a yellow fellow, about forty; Joe, a young black fellow, about twenty; Amos, a dark mulatto fellow, about twenty-eight; Patsey, a tawney colored woman, about twenty-five, and her infant child, William Henry; Sally, a black woman, about forty; Andrew, a black boy, ten or eleven; Albert, a yellow fellow, about twenty; Ireeny, a dark mulatto girl, about thirteen or fourteen years; Jane, a yellow woman, about eighteen, and her child Henry, about two years old, also yellow.

32d. He answers, that the following are the circumstances under which he received a bill of sale to a large parcel of negroes from Warren Jordan, some time about the 11th or 12th of March, 1842, and also the circumstances under which he sold said negroes to R. J. Floyd and A. T. Bennett, to wit: About the 1st of March, 1842, Warren Jordan employed Jeptha C. Harris, esq., of Albany, Geo., to take charge of about eighty negroes, for the purpose of carrying them to Texas, and settling a plantation for him, giving to Harris a power of attorney to control, protect, and manage said property. Harris proceeded with the negroes to Appalachicola, on the steamboat Louisa, which was the property of A. T. Bennett, for which passage he paid to James Y. Smith, (who then commanded the boat,) a likely young fellow, that would now command from six to seven hundred dollars. After landing with the negroes at Appalachicola, Harris went into the custom-house, for the purpose of procuring a certificate of clearance, which appeared to be a prerequisite to their being shipped; and while there the negroes were arrested by the deputy marshal, N. Baker, under a false attachment, sued out by one John H. Watson, as agent for the Central Bank of Georgia, vs. one J. L. Hodges, and were taken from the possession of Harris by the marshal and placed in jail. Harris being unable to replevy the negroes, determined to return to Georgia, and inform their owner of their situation, when Bennett tendered his

services to accompany him, and did go with him to the plantation of Warren Jordan, in Baker county, Georgia, where Jordan was then staying. About half an hour previous to their arrival at Jordan's plantation, witness had also arrived there, and Harris and Bennett both represented to witness and Jordan the facts above detailed; they also represented Bennett as being a respectable citizen of Appalachicola, with thirty thousand dollars, for the truth of which Bennett frequently appealed to Harris's knowledge of him, &c., and stated that he was so kindly desirous to aid Col. Jordan in the liberation of his property that he had come all the way to tender him the use of his name, or his services in any way that would effect that object; they further stated that Bennett and his friends had further offered to leave Harris security to replevy the negroes, which could not be done under the power of attorney he then had; they had, therefore, come to the conclusion, that it would be best to obtain a bill of sale to the negroes, from Warren Jordan to Harris, for the purpose of enabling Harris to claim the negroes, which being done, there would be no further difficulty in replevying them, as Bennett and his friends could and would give any security that the marshal would require. As witness was there, Harris proposed to Col. Jordan to intercede with witness to go with them to Appalachicola, and to make to him a bill of sale to the negroes, for the purpose of replevying them. This arrangement Bennett strongly backed, and urged, both to Col. Jordan and witness, that the bill of sale should be executed to him. Witness objected, and replied to his proposition that he had a power of attorney from Warren Jordan, regularly executed and recorded, constituting him his agent in any State or Territory in the Union, which was amply sufficient to enable him to replevy the negroes; to which Bennett replied, that his friends at Appalachicola were respectable and wealthy merchants, but they knew but little about legal matters, and they had been advised by counsel that the negroes could not be replevied unless the person had a bill of sale to them; and that, unless he took one, it would be out of his power to afford him the aid he desired to do. It was finally settled and agreed that witness should take the bill of sale, upon a pledge of honor from Bennett, made both to Jordan and witness, and over and over repeated, that himself and his friends would afford ample security to enable him to replevy the negroes. Under these promises, and for the satisfaction and gratification of Bennett, witness received the bill of sale from Jordan to the negroes, to which Bennett and Harris were subscribing witnesses, and for the sole and only purpose of enabling him to replevy them for the benefit of Warren Jordan, who was the true and bona fide owner of them. In the event of witness having to claim the negroes personally, he thought it best to execute his note to Jordan for something like the value of the negroes, and some money was laid on the table at the time the bill of sale was signed, and which was again taken up by witness, in the presence of the witnesses to the bill of sale, and put in his pocket, they knowing that not one cent was actually paid, or even intended or expected to be paid, and that the note which was executed

by witness to Jordan was not accepted, or intended by either of them ever to be paid, which facts were as well known and understood by Bennett as by themselves, the whole being done to place matters in a form to please Bennett, and thereby secure his promised aid in procuring the security necessary to replevy the property.

Bennett stated to witness that James F. Farrior and Ellison & Ropes were two wealthy houses at Appalachicola. Both of them were in his debt, and under obligations to him, and would do any thing he desired, and would, without hesitation, at his request, unite with him in becoming security to a bond to replevy the negroes, and that Baker, the deputy marshal, was his intimate friend, and would do any thing he desired. But to the astonishment of witness, on their arrival at Apalachicola, and his making an attempt to replevy the negroes, he found that, instead of Bennett's complying with his promises so solemnly made to Jordan and himself, to aid him in replevying the negroes, he was using every exertion in his power to prevent witness from being able to effect it, and witness had various reasons to satisfy his mind that Bennett had combined with the marshal to prevent his doing so, as the marshal required of Major Floyd, the friend of witness, a bond for forty thousand dollars, to be signed by four securities, each to swear that he was worth twenty thousand dollars in visible property within the jurisdiction of the court, beyond the payment of their just debts. Knowing full well that no such bond could be made, Bennett stated to witness that Baker had become jealous of him, and would not take his name on the bond, and that he was not able to procure the security for him that he thought he could, and that the probability was the negroes would have to be sacrificed where they were. After it was found by witness to be impossible for him to replevy the negroes, in consequence of the amount and character of the bond required by the marshal, he determined to make it to the interest of some persons to aid him to replevy them by offering to them a portion of the negroes. He therefore proposed to R. J. Floyd that, if he would make a bond that the marshal would take, that witness would give him ten average negroes. Floyd required a little time to see whether he could make the arrangement, when he reported to witness that Bennett would not suffer it to be done for less than forty negroes, and that Bennett controlled the marshal. Witness then made an arrangement with another company to make a bond to replevy the negroes by giving them a portion of them. While they were endeavoring to arrange a bond, witness was in Bennett's office, and sitting in a position that the door, which was partially opened, concealed him, when Baker came to the door of the office, and informed Bennett that those men were about making a bond that he would be obliged to take. Bennett made no reply, and Baker, without saying anything more, went down stairs; witness immediately left Bennett's office and went into Floyd's, which was adjoining, when he heard Bennett hastily pursue after Baker. Witness then followed in the rear, so as not to be perceived by them, until they got together and entered the Appalachicola Exchange,

where Baker kept his office at the time. That evening the other company informed witness that the marshal would not take their bond, so the arrangement between them was broken off. From all these circumstances witness was fully satisfied that Bennett and the marshal were combined, and determined that he should not release the negroes.

After this various propositions were made to witness to purchase the negroes as they then stood in the jails, among which was one from Bennett. Witness remarked to him that he well knew witness had no bailed title to the negroes, and had no right to sell them; to which Bennett replied promptly, you have Warren Jordan's bill of sale to them, and I will purchase your title. Witness refused to sell any thing that would interfere with the rights of Warren Jordan or his creditors, or with the rights of his own creditors, if by any possibility any title should have been vested in him by the bill of sale from Jordan to witness; therefore he required of Bennett, as a condition of the sale, if he made one to him, that he should give him a written acknowledgment under his hand and seal, together with R. J. Floyd, his proposed partner in the purchase, that they bought the negroes without delivery, as they stood in the possession of the marshal, subject to all the liabilities that were against them in the way of debt, either by note, judgment, or mortgage, in the State of Georgia, either as the property of Warren Jordan or the said Reuben Thornton, he, the said Reuben, only warranting the same against himself and his heirs, and such a paper was given to witness under the hands and seals of Bennett and Floyd, bearing the same date with the bill of sale made by witness to them, in which the words are introduced verbatim as above expressed and underscored; that the bill of sale from witness to Bennett was witnessed by N. Baker, deputy marshal, and Terry, a justice of the peace, who [were] more particularly notified by witness before they signed it, that he had no title whatsoever to the negroes the papers they were about to sign purported to convey, and that they were the same negroes then in the custody of Baker, and locked up in jail, and that they were the property of Warren Jordan, of the State of Georgia, and that he sold his title, only whatever title might be, and that he wished them to distinctly understand that he sold nothing that would interfere in any way with the title or claim of others, particularly with Warren Jordan or his creditors, or the creditors of himself. The bill of sale was signed by witness, and also the subscribing witness thereto, under the above detailed declarations to them, in the presence of the said A. T. Bennett, R. J. Floyd, and James F. Farrior, the last mentioned of whom witness learned for the first time was concerned in the purchase. Witness further states a fact, which satisfied him that the marshal and Bennett were concerned in the general arrangements, that within an hour or two at farther est after the payment of the money and a delivery of the bill of sale from him to Bennett and Floyd, the negroes were delivered to them by the marshal, Baker, on a bond signed only by the said Bennett, Floyd, and Farrior, as he was informed and believes to be so, and the negroes were immediately put

on board a schooner, and that evening carried into the bay, notwithstanding Baker had required of witness, as before stated, a bond with four good securities to it, each to swear he was worth twenty thousand dollars in visible property within the jurisdiction of the court, over and above the payment of their just debts, and Bennett informed witness that Baker refused to take him as one of the four required.

Witness further answers, that he does not now recollect delivering any paper or note to J. C. Harris from Warren Jordan informing him that he had sold the negroes to witness, and authorizing him to deliver them to witness; though such a paper might have been executed at Mr. Harris's suggestion, and delivered to him for his future justification, and to show that his agency in the matter had ceased. It could not have been done for any other purpose in the opinion of witness, as Harris, in connexion with Bennett, advised and urged the execution of the bill of sale from Jordan to witness, to enable him to replevy the negroes, and was a subscribing witness thereto, consequently no such note was necessary to give him notice of a transaction in which he personally bore so prominent a part.

33d. He answers, that he never offered any negroes for sale in the city of Appalachicola to Wiley Mason, or to any other person whatever. Nor did he ever assert to any person in Appalachicola that the negroes referred to were his bona fide property; but, on the contrary, he asserted to every person in Appalachicola withwhom he conversed on the subject, both publicly and privately, in the streets and every where else, and on one occasion before a hundred persons, (when he was arrested by the directions and through the agency of A. G. Semmes, the attorney who propounds these questions, and carried before Judge Baker, who witness believed at the time to have been a partner in the plot, for the purpose of sending him to jail, and extorting from him three or four thousand dollars, under a charge that witness had imported into and sold negroes illegally in the Territory of Florida,) that he, witness, had no right or valid title to the negroes, and that they were the bona fide property of Warren Jordan, and that the bill of sale given by Jordan to witness was only done, as before repeatedly stated, to enable witness to replevy the negroes for the benefit of Jordan, and that witness had no personal interest in the property whatever, and was only acting as the friend and agent of Jordan.

Witness further answers, that Wiley Mason, through Charles Cleghorn and others, as well as Bennett, made repeated propositions to purchase the negroes of witness, some of which were made personally to him, and others through Mr. Harris; that at first these propositions were treated by him contemptuously, and the persons informed that he had no right or authority to sell; but, after a frequent repetition of these propositions, and witness believing firmly if the negroes remained as they then were, before the various litigations that would grow out of their situation could be finally settled legally, that the whole of the property would be consumed by death and expenses, and nothing left of it either for the creditors or family of Warren Jordan, witness came

to the conclusion, that if the persons who were proposing to purchase would be satisfied to purchase his title only, giving a written acknowledgment that they knew the negroes to be Warren Jordan's, and that they bought them subject to all the legal rights and claims of his creditors, as they then stood in jail, and without delivery from witness, that, under such circumstances, he would sell them, inasmuch as he believed such a sale could not violate or interfere with the rights of any person whatever, and the purchaser, being apprised of all the facts, could have no just cause to complain, if a bargain sought by himself, and made with his eyes open, should thereafter run him into difficulties and loss.

Witness further states, that a paper, containing in substance the foregoing stated acknowledgment, was agreed to be given to him by every party that made to him propositions to purchase the negroes, and that such a paper was made by him a sine qua non, even in the preliminary discussions of a sale in every instance, and, as before stated, was given to him by Bennett and Floyd at the time they purchased, which paper shows clearly and distinctly that they well knew they purchased nothing that interfered with the legal rights of Warren Jordan or his creditors.

Witness further answers, as he has before frequently answered to these cross interrogatories, that he used every honest and honorable exertion in his power to replevy the negroes for the benefit of Warren Jordan, and, if he could have succeeded in doing so, it was his intention to have removed them as speedily as possible to some place of safety, until he could have returned to the owner and attempted to adjust matters between him and his creditors, as witness considered the negroes a prey for rogues and swindlers as long as they remained in the Territory of Florida.

34th. He answers, that he delivered the bill of sale from Jordan to himself to Bennett and Floyd, at their request, because, by so doing, he conceived he was doing Warren Jordan no injury whatever, having clearly, fully, and distinctly protected his title and interest in the paper, signed by Bennett and Floyd, acknowledging the terms and conditions upon which they purchased, and by the subscribing witnesses to the bill of sale from himself to Bennett and Floyd. He considered the bill of sale from Jordan to himself as a nullity, not only because no consideration was paid, or ever intended or expected to be paid, for the negroes, but because it was executed upon false representations and promises made by Bennett, which he did not nor never intended to redeem when he made them. He further answers, that he received six thousand dollars from Floyd, Bennett, and Farrior, at the time the sale was consummated, and that he has received twenty-two or three hundred dollars as the agent of Charles T. Thornton, who is the legal holder of the notes from R. J. Floyd, since that time.

35th. He answers, that he has acted as the general agent of Warren Jordan, by power of attorney, bearing date the 28th day of February, 1841, and entered on record in the county of Hall, and State of

Georgia, on the 23d day of March of the same year, with the clerk's certificate and county seal annexed thereto, which power of attorney remains unrevoked by the maker, and has never been surrendered by himself; and that as long as he retains it in his possession, unrevoked by the maker, he considers himself morally and honorably bound faithfully to discharge the duties growing out of the trust reposed in him at the time of its execution; and that he had, under this trust and confidence reposed in him by the maker, transacted nearly the whole of his business of much importance from that time to the present. That, under that power of attorney, he has made various arrangements with Col. Farish Carter, and others, relative to his affairs, both before and since the assignment of said mortgage to him by the Georgia Railroad Bank, and the commencement of the foreclosure of the mortgage. That, as the agent of Warren Jordan, he deemed himself morally and honorably bound to advance and protect the interest of his estate by all honorable and legal means in his power, under any and all circumstances; that he becomes satisfied his exertions would be beneficial, and that he has never made a contract with Carter, or any other person else, that he believes would violate the trust reposed in him by Warren Jordan, or in any way affect his rights, or the rights of his creditors, or any person legally and honestly claiming or holding property through or under him; and that he has never made any contract, engagement, or understanding with Carter, by which any advantage was to be received or gained by him personally, either in connexion with Warren Jordan's affairs, or in any other way.

36th. He answers, that his answer to the foregoing 35th interrogatory is his answer to this.

37th. He answers, that he came from Georgia at the time referred to, as the agent of Charles T. Thornton, for the purpose of collecting the amount due him by Bennett, Floyd, and Farrior, and that he brought no power of attorney with him from Warren Jordan, with a view or design of assisting Carter in the suit referred to, nor had he with him at that time any other power of attorney from Warren Jordan, than the one described in his answer to the 35th cross interrogatory.

38th. He answers, that he did not represent himself to be the agent of Warren Jordan, further than the power of attorney, described in his answer to the 35th cross interrogatory, constituted him such, and that the instrument will speak for itself, a copy of which will be found filed in the office.

39th. He answers, that he was called on by Mr. Brockenbrough, as the agent of Warren Jordan, to know whether he had any objection to the foreclosure of the mortgage against Warren Jordan, instanter, which he informed him could be done by a waver of notice by publication, and some other matters, not now distinctly recollected, which, after an examination of his power of attorney, he satisfied him he could do; and upon being further and fully satisfied that the rights of Jordan would not be affected by it, but that his estate would be greatly benefitted by a saving of expense, he felt it to be his duty to grant the per-

mission he requested, which was done in writing, and, he presumes, was filed in the clerk's office. He further answers, to the best of his recollection, it was done in Col. Hawkins' office, and that Carter was not present, nor has he any knowledge that Carter was apprised of the application made to him by his counsel.

40th. He answers, that he was not present when the attachment was granted, and knew nothing about it, or what proceedings were intended to be resorted to by Carter's counsel, further than he has already answered to the 39th cross interrogatory, until after those proceedings were perfected. He consequently does not know when or at what time the attachment was granted, but from what he afterwards understood, he is of the opinion it was granted some days previous to the time it was sued; that he has no knowledge of the service of the attachment, except on one negro, and that one was not at the house of Bennett; that he does not know how many persons were drafted or volunteered to assist in the service of said attachment; nor does he know when they proceeded to Bennett's house, or whether they went there at all, or not, or where they served the attachment on the negroes; nor does he know whether they where armed or not; nor does he know whether Carter assented to or advised said proceedings; nor does he know what directions he gave on the subject, or whether he gave any.

He further answers, that he knows nothing of his own knowledge, in relation to the arrest of the negroes, further than he has already stated; whatever else he knows, has been gathered from the statements of others. But he presumes that no person else ought to be better acquainted with these facts, if they be facts, than Col. A. G. Semmes, as he was Col. Carter's attorney at the time, and received five hundred dollars in cash for professional services in the foreclosure of the said mortgage. From the large amount of the fee, which he knows Col. Semmes received from Col. Carter, it is a just and reasonable conclusion, that he must have rendered some very important services in that case, and as he knows the Col. to be exceedingly diligent in protecting his clients' interests in other cases, and that he possesses a peculiar faculty for influencing the public mind and managing law suits out of doors, it is reasonable to conclude, from the character of the information sought after in this interrogatory, that that must have been the particular service allotted to him in that case. This supposition is fortified by the fact, that the first petition, &c., which was filed for the foreclosure of the mortgage, being the labor of the Col., proved to be a total failure, and that he rendered no service whatever in the court-house, in support of the amended petition; therefore he must have had assigned to him, as his appropriate share of the management of the case, that portion which seems to have been so well suited to his peculiar qualifications; therefore, if the information sought after in the interrogatory be of importance to either of the parties, this suggestion will apprise them of a source from whence it can probably be obtained, and save the trouble of issuing interrogatories to others on subjects with which they have not had the same means of becoming acquainted. The many peculiar positions the Col. has occupied in relation to these

negroes: first, as the counsel of Watson, aiding, by the means of a false attachment, to take them from the possession of the agent of the rightful owner, did put them in jail; secondly, as counsel for the Georgia Railroad Bank and Carter, and its presumable, from the reasons already given, that he took them from the possession of Bennett for the benefit of Carter; and, lastly, as counsel for Bennett, he is endeavoring to take them away from Carter and give them back again to Bennett, affords him so fine an opportunity of knowing the secrets and facts of all the parties that have been connected with these negroes, from their first landing in the Territory to the present time, that it is highly presumable no one can be as well qualified to give the whole truth to the jury as the Col. is himself, and it is most certain that no other person has occupied the same favorable opportunity for obtaining so extensive a stock of it.

He further answers, that he hopes the parties will pardon him for those suggestions and hints, as, in the event of their being hard run for testimony, they may be benefitted by them.

41st. He answers, that he always said to those with whom he had conversed on the subject, that his title to Bennett and Floyd was worthless, so far as the rights of Warren Jordan and his creditors are concerned, and the instrument signed by them, showing the terms and conditions upon which they bought the negroes, proves that fact, under their own hands and seals, beyond the possibility of a doubt. He also answers, that he stated to Mr. Adams, at the time of the sale of some of the negroes, that the marshal's title would be good; and did so from his knowledge of the fact that the debt under which the marshal was selling the negroes was a just and bona fide claim against Warren Jordan, who was also, to his own knowledge, the true and lawful and bona fide owner of the negroes the marshal was selling, except the two embraced in the will of Mildred Dudley, as before explained.

42d. He answers, that he has repeatedly answered before, as he now does, that all he has done in relation to, or in connexion with, the negroes, except in the sale made by him to Floyd and Bennett, has been done by him as the agent of Warren Jordan, and that he has not, nor never has had, any personal interest in the matter; and that his object is to make the bona fide property of Warren Jordan pay the debts for which it is bound, and if there is any thing left, for it to go to his family, to whom it justly belongs. He further answers, that Warren Jordan married his daughter, and her children are now living, and that the records of the court at Appalachicola will best show the nature and character of the interest held by Charles T. Thornton in the notes for which he is now suing Bennett and Farrior.

43d. He answers, that on application to A. G. Semmes, the counsel of Bennett and Farrior, to know whether there would be any chance to adjust the claims of Charles T. Thornton against Bennett and Farrior, without further trouble or expense, Semmes informed him that negotiations were then going on between Carter and Bennett which

might lead to a settlement of the whole matter; to which he replied, that the matter in controversy, and any arrangement growing out of them, between Carter and Bennett, had nothing to do with these claims, and that no compromises between them, if any were contemplated, could be suffered to interfere with these claims. Semmes remarked, that it would make no difference who paid the claims, so they were paid; to which witness replied, that these claims had to be paid, and could not nor should not be allowed to be the subject of negotiation between others; that, as the agent of Charles T. Thornton, he should take care to see that they were paid, and that he was not interested, or had any thing to do with any of the matters of controversy then existing between Carter and Bennett, either as the agent of Warren Jordan, or in any other way, except so far as concerns the original suits against Bennett and Farrior for the negroes they had run off belonging to the estate of Warren Jordan. That the foregoing is the substance of the conversation that passed between himself and Col. Semmes, and that similar conversations may have passed between himself and others, but has no recollection, at present, of any such. Lastly, witness further, and in conclusion, answers and states, that it was agreed between Col. Semmes and Col. Hawkins, in his presence, that his interrogatories should be taken while he was in Appalachicola, for the purpose of being read in all the cases pending in the Territory between Carter, Bennett, and Farrior, as intimated to the caption of the cross interrogatories; which agreement, he thinks, was reduced to writing, and that he waited in Appalachicola four days, with a view of answering them at that place, in accordance with said understanding; but, when received, they were so voluminous, and embraced so wide a range of casual and disconnected conversations, as well as facts, that he at once saw it was impossible to give the information sought by them as correctly and fully as he desired to do, without much reflection, and a recurrence to his various memorandum of facts, which he has taken care to preserve on all important occasions and transactions, from the beginning of his agency for Warren Jordan down to the present moment, for fear that he might, by possibility, through forgetfulness, give an incorrect answer to some one or more of the numerous conflicting, contradictory, pertinent, and irrelative questions contained in the cross interrogatories, by which he might, unintentionally, do injustice to some of the parties. Consequently he brought the interrogatories from Appalachicola with him, and proceeded to write out the answers as fast as time would permit for him to make the necessary examinations, and fully satisfy himself that his recollections were correct, and that each answer, as written, *are*, to the best of his recollection and belief, correctly given. Witness further states that these answers were written out by him before he was apprised of the death of Col. Warren Jordan, and which occasionally refers to him as if living; but as he conceives, with this explanation, that no part of his testimony can be materially effected or misapprehended; from that fact he has proceeded to perfect the interrogatories by qualifying to the an-

swers as they were previously written, without the trouble of making the slight alteration the occasion referred to might have required, and thereby save the labor and trouble of copying so large a mass of matter. He further adds, that the memorandums he alluded to as necessary to be referred to by him, for the purpose of refreshing and confirming his recollection, are certified copies of records, the written statements of disinterested persons, of facts taken at the time they occurred, and which he knew himself to be true, and memorandas made by himself of important facts and dates, either in course of business or to prevent a forgetfulness of them; that therefore, the great and most important mass of his testimony contained in the foregoing answers is as correct as those precautions are calculated to guarantee to him a correctness of recollection, and that the whole of the balance, as far as he has testified, is also true, to the best of his knowledge, recollection, and belief.

Therefore, we, Benjamin T. Smith, James O. Taylor, and George W. Mayo, commissioners as before named, do hereby certify, that we have carefully examined and put the foregoing direct and cross interrogatories, separately and distinctly, to the said Reuben Thornton, and that the foregoing answers, as numbered and designated, written by himself, are his true answers to each and every one of them, which are assumed and acknowledged before us, under oath, by the said witness, as being true to the best of his knowledge and belief, which was done, and [to] which we annex our hands and seals in the village of Athens, in the county of McMinn, and State of Tennessee, on the first day of February, one thousand eight hundred and forty-four.

BENJ. T. SMITH, [SEAL.]
JAS. B. TAYLOR, [SEAL.]
GEO. W. MAYO, [SEAL.]
*Commissioners.*

6. Defendant next read paper dated sixteenth day of March, A. D. 1842, signed by A. T. Bennett and R. J. Floyd, given to Reuben Thornton, handwriting of subscribing witnesses, and parties being admitted by endorsement on agreement of counsel of December, 1846, which endorsement and agreement is herein before inserted. See page 29.

TERRITORY OF FLORIDA, *Franklin county*.

Whereas Reuben Thornton, of the county of Hall, and State of Georgia, has this day sold to R. J. Floyd and A. T. Bennett, the following negroes, which are now in the hands and possession of the marshal, under an attachment sued out against one J. L. Hodges, to wit, old Tom, Dick, Allen, Cato, Charles, Gilbert, Amos, Merida, Elias, Jack, Abram, Major, Ben, Sam, Jeffrey, Rica, Moses, Americus, Albert, Billy, Isaac, John, Coon, Joe, making twenty-four fellows; Grandison, Fayett, Andrew, Virgil, Washington, Tom, Marcus, Clem, William, Monroe, Wylie, Charles, Simeon, making thirteen

boys; Sarah, Martha, Patsey, Jane, Susan, Narcissa, Jinsey, Dinah, Harriet, Fada, Mariah, Milley, Rachel, Penny, Sally, and Nancy, making sixteen negro women; Charlotte, Caroline, Antoinette, Camilla, Francis, Lucinda, Ellen, Sarah, Amanda, Fanny, Avarilla, Mary, Crissa, Abby, Clarissa, and Jenny, making seventeen girls; Jenny, William, Henry, Albert, Cornelius, Randle, Henny, and Emeline, making eight infants, which said negroes are sold by the said Thornton to us, the said R. J. Floyd and A. T. Bennett, subject to all the liabilities that are against them in the way of debt, either by note, judgment, or mortgage in the State of Georgia, either as the property of Warren Jordan or the said Reuben Thornton, the said Reuben only warranting the same against himself and his heirs. This is, therefore, given by us to show that if any of said property should be lost by suit in consequence of any claims as aforesaid, that it is to be no offset or plea against the payment of the note of seven thousand dollars, bearing even date with these presents, given by said Bennett and Floyd in payment for said negroes, as witness our hands and seals this 16th day of March, 1842.

R. J. FLOYD, [SEAL.]
A. T. BENNETT [SEAL.]

Signed, sealed, and delivered in the presence of—
J. C. HARRIS,
J. M. TEAGUE.

TERRITORY OF FLORIDA, *Franklin county, ss.*

I, Walter W. Holenbeck, clerk of the county court of said county, do hereby certify, that J. M. Teague, whose name appears as one of the witnesses to the foregoing instrument of writing, is at this time dead, and J. C. Harris, the other subscribing witness, resides beyond the limits of said territory, so that the proof of the aforesaid instrument of writing cannot be obtained, upon his oath, without much trouble, expense, and delay; therefore it is suggested that the proof of the execution of the same be taken upon the oath of some person familiar with the signatures of one or both the subscribing witnesses aforesaid. Whereupon personally appeared John D. Atkins, who, after being by me duly sworn, declares and states upon oath, that he is personally acquainted with J. C. Harris, and familiar with his handwriting, and verily believes that his signature as one of the subscribing witnesses to the aforesaid instrument of writing is genuine.

In witness whereof I have hereunto set my hand, and affixed the [L. S.] seal of said county, this the ninth day of January, A. D. 1843.

W. W. HOLLENBECK, *Clerk*.

7th. Defendant then read the following record of the proceedings in district court of the United States for [the] district of Appalachicola, sitting as the superior court of Franklin county, in the Territory of Florida, said record still being and remaining in custody of the clerk of this court, a copy read by consent for concurrence.

Plaintiff objecting to said record, which was read by defendant, without prejudice to plaintiff's objections.

Pleas before the honorable Samuel W. Carmack, judge of the Franklin superior court, in the district of Appalachicola, in the Territory of Florida, began, continued, and held in the city of Appalachicola, on the sixteenth day of December, A. D. 1842.

Be it remembered, that heretofore, to wit, on the sixth day of April, of the year aforesaid, the Georgia Railroad and Banking Company, by Albert G. Semmes and George S. Hawkins, esquires, attorneys at law, filed in the clerk's office of said court the following petition:

To the honorable Samuel W. Carmack, judge of the superior court of Franklin county, in the district of Appalachicola, Florida.

The petition of the Georgia Railroad and Banking Company respectfully showeth: That Warren Jordan, on the thirtieth (30) day of October, in the year 1839, in the State of Georgia, made, executed, and delivered unto your petitioner his certain mortgage deed, bearing date the day and year aforesaid, the original of which is hereunto annexed, and prayed to be taken as a part hereof.

Your petitioner showeth that, by said mortgage deed, the said Warren Jordan mortgaged to your petitioner certain real estate and negro slaves, the particular description of which will be seen by reference being had to said original mortgage deed, hereunto annexed, and prayed as before to be taken as a part of this petition.

Your petitioner further shows, that said slaves mentioned in said mortgage deed, were removed from the State of Georgia to the county of Franklin, in said Territory, and are now in said county of Franklin.

Your petitioner further showeth, that there is now actually due upon said mortgage deed, from the said Jordan to your petitioner, the sum of five thousand dollars, (besides interest,) and your petitioner begs to refer this honorable court to a full description of said slaves in said mortgage deed to said mortgage, which is hereunto annexed as a part hereof.

Your petitioner, therefore, prays that the said Warren Jordan, and all persons claiming or to claim by, through, or under him, the said Jordan, may be forever foreclosed and barred of, and from, his, her, or their rights or equity of redemption in and to said negro slaves mortgaged as aforesaid; and your petitioner will ever pray, &c.

The Georgia Railroad and Banking Company, by its agent and attorney,

A. G. SEMMES.
GEORGE S. HAWKINS and
A. G. SEMMES,
*Attorneys at law for plaintiff.*

GEORGIA, *Hall county.*

Whereas an arrangement was entered into on the 28th day of December, in the year eighteen hundred and thirty-eight, by and between

Warren Jordan, of said county, and the Georgia Railroad and Banking Company, whereby a loan of $25,000 was extended by said company to the said Warren, on his note for that amount, dated the day and year aforesaid, payable one hundred and eighty-four days after date, to the order of, and endorsed by, Reuben Thornton, of said county, and secured by a mortgage of even date on the property hereinafter described, with the exception of lot No. 285, in the second district of Baker county, in this State, containing 250 acres of land, which said note it was agreed should be renewable every six months after the first day of January, 1839, so as to be made fall due on the first days of July and January in each year, for five successive years, from and after the said first days of July and January, or on the first discount days of said bank succeeding the said first days of July and January, 1839, subject to a reduction of ten per cent. at each renewal, or twenty per cent. annually, as the said bank may thereafter require the whole amount of $25,000 to be paid by the expiration, or within the limits, of five years, as aforesaid, from the first day of January, 1839, together with all interests and expenses that might be required by said bank at each renewal, in accordance with its rules and regulations, not to exceed the rate of eight per cent. per annum.

And whereas, in accordance with the said arrangement, the said Warren renewed his said note, so given as aforesaid, for $25,000, by giving a new one, with the same endorser, to the said Georgia Railroad and Banking Company, on the first day of July, 1839, payable six months after date, for $22,500, and paying the reduction and interest required by the bank.

And whereas it being now discovered that there has been an omission to record the said mortgage, and that the time allowed by the statue of the State for that purpose has elapsed, the parties have agreed to remedy the omission by the execution of a new mortgage for the same property, with the addition aforesaid, and the due record thereof, for the security of the said note of $22,500 now remaining in said bank, and of all other notes that may be given in renewal thereof, or of each other, and of the interest and costs that may accrue on the same: to these ends, therefore, this indenture, made and entered into this 30th day of October, in the year of our Lord 1839, by and between the said Warren Jordan, of the first part, and the said Georgia Railroad and Banking Company, of the second part, witnesseth: That the said Warren Jordan, for and in consideration of the premises, and the sum of ten dollars to him in hand paid by the said Georgia Railroad and Banking Company, at the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, to the said Georgia Railroad and Banking Company, the following land, town lots, and negroes, to wit, fifteen hundred acres of land, immediately adjoining the town of Gainesville, in the said county of Hall, and State aforesaid, comprising lots Nos. 149, 150, 152, 153, 167, 168, and parts of lots 154 and 136, forming one body, lying on both sides of Flat creek, adjoining lands of

Cooper, Daniel Mitchell, and others; together with all the various buildings thereon, comprising six dwelling houses, and a great variety of other houses, necessary for the different lots and settlements thereon, which said tract of land is the one whereon the said Warren now resides; also the following improved lots in the town of Gainesville, to wit, part of lot eleven and twelve, with storehouse and improvements thereon, fronting on the public square, adjoining property belonging to Rivers on the north, and Brown on the south; lot number twenty-eight, with the buildings and improvements thereon. Also, three thousand acres of land in the second and third districts of originally Early, now Baker, county, in said State, comprising six lots on the Colomoke creek, known as number 271, 272, 273, 274, 275, and 286, adjoining Denard, John Taylor, and others; also on Chickasahatchie creek, No. 180, 179, 219, 220, 224, all in the second district, and 181 in the third district aforesaid; which said lots or tracts of land were conveyed by Jerry Cowles to the said Warren Jordan. Also lot No. 285, in the second district of said county of Baker, containing two hundred and fifty acres; also, the following negroes, to wit, Davy, carriage driver; Albert, house servant; Richard, shoemaker; Cato, Ben, Coon, Charles, Betty, Tom, Abram, Allen, Henry, Jerry, wagoner; Jeffrey, Horace, Jack, Tom, superior house carpenter; Amos and Moses, good house carpenters; and Lane, making 24 fellows. Also Isaac, Americus, Elias, Starling, Tom, and Rica, six lads nearly grown. Susan and her eight children, as follows: Maria, grown; Amelia, nearly grown; Rica, plough boy; Edenboro, Charlotte, Pompey, Sarah, and William; Narcissa, and her four children, Washington, Oliver, Darby, and Clement; Rachel, and her two children, Abby and Grandison; Martha, grown woman; Daphney and Nancy, two women; Jinney and her child, Caroline; Dinah and her four children, Irene, Antoinette, Marcus, and Avarilla; Penny, woman; Patty and her child; Rose and her seven children, Clarissa, Joe, Emeline, Camilla, Elias, Araminta, and Angeline; two Sarahs, women; Patsey, a valuable cook; Mary, house servant and seamstress; Sally, cook and washer; Fada and Rhoda, two women; Harriet and her two children, Francis and Monroe; Cilla and her child, Major; Gilbert, Terrel, and Andrew, these lads; together with all and singular the rights, members, and appurtenances to the said lands belonging, or in anywise appertaining; to have and to hold all the above bargained property to the only proper use, benefit, and behoof of the said Georgia Railroad and Banking Company, their successors and assigns forever, in fee simple; and the said Warren, for himself, his heirs, executors, administrators, the above bargained property unto the said Georgia Railroad and Banking Company will forever warrant and defend against the claims of all persons whomsoever. Provided, nevertheless, that the said Warren Jordan, his heirs, executors, or administrators, shall well and truly attend to the renewal of said note for twenty-two thousand five hundred dollars now running in the said Georgia Railroad and Banking Company, at their office or banking house in Athens, and of all notes that

may be given in renewal thereof, and of each other, and particularly pay all reductions and discounts which shall become due thereon, according to the true intent and meaning of these presents, so as to complete the payment of the whole $25,000 originally borrowed by the said Warren from the said company, within the five years as above specified, from the first day of January, 1839; together with all interests, costs, and charges of any kind that may arise from any defalcation, so to do, or cause the same to be done, then and from thenceforth, as well this indenture and the rights of property thereby conveyed, as the said note now running as aforesaid, and all others given in renewal thereof, or of each other, shall cease, determine, and be void to all intents and purposes; but in default thereof, according to the plain tenor and meaning of these presents, the said Georgia Railroad and Banking Company shall have the right and is hereby vested with the power of foreclosing this mortgage according to law, and to sell so much of the property hereby conveyed as will satisfy all legal demands of the said Georgia Railroad and Banking Company against the said Warren Jordan, growing out of his defalcation or failure to comply with the conditions and agreements of this mortgage; and after paying all the principal, interests, costs, and charges on the same, that he, the said Warren, may be held liable and responsible for, the balance, if any, shall be paid over to the said Warren, or his legal representatives, and the balance of the property not sold shall likewise be immediately, to the said Warren or to his legal representatives, reconveyed by the said Georgia Railroad and Banking Company.

In witness whereof the said Warren Jordan hath hereunto set his hand and seal, this said 30th day of October; 1839.

WARREN JORDAN. [SEAL.]

Signed, sealed, and delivered in presence of—
REUBEN THORNTON,
GEORGE MERCH, *J. P.*

GEORGIA.

Recorded in clerk's office, Hall superior court, book E, pages 261, 263.

(Signed) E. M. JOHNSON, *Clerk*.
October 31, 1839.

GEORGIA, *Clarke county*.

This is to certify and make known, that E. M. Johnson, who has ubscribed the foregoing certificate of this mortgage having been recorded in the clerk's office of the superior court of Hall county, (which said county is in the western district,) is the clerk of said court, and that the said certificate is in his handwriting, and that full faith and credit is due to his attestation as such, and that said certificate is in due form.

(Signed,) JAMES HILLYER, J. S. C. W. D. [SEAL.]
March 28, 1842.

Witness my hand and seal as judge of the western district, Georgia.

Registered in the clerk's office of the supreme court of Baker county, in book 7, on pages 181, 182, 183, 184, 185, and 186, the 16th day of December, 1839.

MAHLON BEDELL, *Clerk*.

Fi. fa. on personal property, issued 5th July, 1842.

SAMUEL H. WILAN, *Clerk*.

The original of this mortage withdrawn by order of court. Entered 17th December, 1842.

GEO. F. BALTZELL, *Clerk*.

GEORGIA.

Know all men by these presents, that the Georgia Railroad and Banking Company, in conformity with a resolution of the board of directors, passed this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty-two, have made, ordained, and appointed, and do hereby make, ordain, and appoint, Hays Bowdre, esq., of the city of Augusta, in said State, and Albert G. Semmes, esq., of Appalachicola, in the Territory of Florida, jointly and severally, the agents and attorneys in fact of the said Georgia Railroad and Banking Company, authorizing the said agents and attorneys, for and in the name of the said Georgia Railroad and Banking Company, jointly or severally, to ask, demand, sue for, attach, foreclose, recover, and receive, of and from Warren Jordan, now or lately of Hall county, in the said State, and Reuben Thornton, of the same place, all such sum or sums of money, debts, and demands whatsoever, which are due and owing to the said Georgia Railroad and Banking Company by the said Warren Jordan and Reuben Thornton, or either of them, and to use all lawful ways and means, in the name and for the proper use and benefit of the said Georgia Railroad and Banking Company, for the recovery thereof by attachment, arrest, foreclosure, or otherwise, and acquittances to give for the same, and to do all other acts and things in the premises as fully as the said Georgia Railroad and Banking Company might or could do under any other mode of action whatever; and the said Georgia Railroad and Banking Company hereby confers on the said Hays Bowdre, esq., the right and authority to substitute and appoint another agent or attorney, or other agents or attorneys, for the same purpose, and with the like or more limited powers, and to revoke any other power now or heretofore given to any other person whatever, of and concerning the premises; the said Georgia Railroad and Banking Company hereby ratifying and confirming, and agreeing to ratify and confirm, whatsoever their said attorneys and agents, or their said substitute or substitutes, may lawfully do or cause to be done by virtue of these presents.

In testimony whereof, the president and cashier of said company have hereunto signed their names, with seal of corporation affixed, in the year of our Lord eighteen hundred and forty-two, on the twenty-sixth day of March.

JOHN P. KING, *President*.

GEORGIA, *Richmond county*.

Personally came John P. King, president, who has signed the foregoing before me, William G. Numno, a notary public for the county of Richmond, and State aforesaid, by lawful authority duly admitted and sworn, and residing in the city of Augusta, and acknowledges the same to be his voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, this twenty-sixth day of March, one thousand eight hundred and forty-two.

WM. G. MUMNO, *Notary Public.*
JAMES CAMAK, [SEAL.] *Cashier.*

GEORGIA, *Clarke county*.

James Camak, cashier of the Georgia Railroad and Banking Company, signed the preceding power of attorney in my presence, declaring that he did so of his own free and voluntary choice.

Witness my hand and notarial seal, this twenty-eighth day of March, eighteen hundred and forty-two.

WM. D. FULTON, [SEAL,]
*Notary Public.*

TERRITORY OF FLORIDA,
*County of Franklin.*

To the honorable Samuel W. Carmack, judge of the superior court of Franklin county.

The petition of Hays Bowdre, agent of the Georgia Railroad and Banking Company, respectfully showeth:

That Warren Jordan, of the State of Georgia, on the thirtieth (30th) day of October, in the year 1839, (eighteen hundred and thirty-nine,) made, executed, and delivered his certain mortgage deed to the said Georgia Railroad and Banking Company, to certain real and personal estate, the latter embracing divers negro slaves, whose names and description may be more fully ascertained by reference to said mortgage deed, which is here shown to the court and prayed to be taken as a part hereof. Your petitioner further showeth, that said negro slaves were brought from the State of Georgia to Appalachicola, Florida, and that your petitioner has good reason to believe, and does believe, that the same will be removed beyond the limits of the jurisdiction of this court; your petitioner therefore prays that an attachment may be ordered by this honorable court to issue as prescribed by law.

(Signed,) HAYS BOWDRE,
*Agent and attorney in fact for the Georgia Railroad and Banking Company.*

TERRITORY OF FLORIDA,
*County of Franklin.*

Personally appeared before me, Samuel W. Carmack, judge of the

superior court of said county, Hays Bowdre, agent for the Georgia Railroad and Banking Company, who being duly sworn deposes and says, that Warren Jordan is justly indebted to the Georgia Railroad and Banking Company in the sum of five thousand dollars; that said sum is really and truly due upon mortgage deed made and executed the 30th day of October, 1839; and this deponent says that he has reason to fear that the property, to wit, divers negro slaves, whose names are contained in said mortgage deed, and which is prayed to be taken as a part hereof, will be removed beyond the jurisdiction of this court.

HAYS BOWDRE,
*Agent and attorney in fact for the Georgia Railroad and Banking Company.*

Sworn and subscribed to before me, this 4th April, 1842.
S. W. CARMACK, *Judge.*

*In chancery.*

On reading and filing the affidavit and petition in above suit, it is ordered, that a writ of attachment issue by the clerk of the superior court of Franklin county, directed to the marshal of the Appalachicola district, commanding him to attach, seize, levy upon, and take into his possession and custody the following negroes, or so many thereof as will be sufficient [to pay] the debt or demand of the Georgia Railroad and Banking Company, amounting to five thousand dollars and the costs and charges of the proceeding, said negroes named as follows in the mortgage deed exhibited to the court: Davy, Albert, Richard, Cato, Ben, Coon, Charles, Billy, Tom, Abram, Allen, Henry, Ivey, Jeffrey, Horace, Jack, Tom, Amos, Marcus and Lane, negro men; Isaac, Americus, Elias, Tom Starling, Rica, boys or lads; Susan and eight children, as follows, Maria, Amelia, Rica, Edenboro, Charlotte, Pompey, Sarah and William; Narcissa and four children, Washington, Oliver, Darbey and Clement; Rachel and two children, Abby and Grandison; Martha, Daphney, Nancy, Jinney and her child Caroline; Dinah and her four children, Ireeny, Antoinette, Marcus and Amarilla; Penny, Patty and her child; Rose and seven children, Clarissa, Joe, Emeline, Camilla, Ellen, Araminta and Angeline; two Sarahs, Patsey, Mary, Sally, Fada, Rhoda, Harriet and her two children, Francis and Monroe, Cilla and her child Major, Gilbert, Ferrel and Andrew.

(Signed) S. W. CARMACK, *Judge.*

Upon which the following attachment issued, and return thereon:

In the name of the Territory of Florida, to the marshal of the Appalachicola district, greeting:

You are hereby required to attach, seize, levy upon, and take into your possession the following slaves: Davy, Albert, Richard, Cato, Ben, Coon, Charles, Billy, Tom, Abram, Allen, Henry, Ivey, Jeffrey, Horace, Jack, Tom, Amos, Marcus, Lane, negro men; Isaac, Ameri-

cus, Elias, Starling, Tom, Rica, boys or lads; Susan and eight children, as follows, Mariah, Amelia, Rica, Edenboro, Charlotte, Pompey, Sarah and William; Narcissa and four children, Washington, Oliver, Darling and Clement; Rachel and two children, Abby and Grandison; Martha, Daphna, Nancy, Jinny and her child Caroline; Dinah and her four children, Irene, Antoinette, Marcus and Avarilla; Penny, Patsey and her child; Rose and seven children, Clarissa, Joe, Emeline, Camilla, Ellen, Araminta and Angeline; two Sarahs, Patsey, Mary, Sally, Fada, Rhoda, Harriet and her two children, Francis and Monroe; Cilla and her child Major, Gilbert, Terrel and Andrew, as the property of Warren Jordan, [or so many thereof] as will be sufficient to satisfy the Georgia Railroad and Banking Company the sum of five thousand dollars and costs, and that you make return of this writ to the judge of the superior court of said district for Franklin county, at a court to be held in the city of Appalachicola on the first Monday of December next. Herein fail not.

Witness George F. Baltzell, clerk of our said court, and also the seal of said court, this sixth day of April, in the year of our [SEAL.] Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth year.

(Signed) GEO. F. BALTZELL, *Clerk*.

Received 6th April, 1842.

N. BAKER, *D. marshal*.

*Return.*

Served the 8th day of April, 1842, on five negro children, from two to four years old, four negro women, four boys and two fellows, one of the negro women named Jane, and her child, one named Clarissa, and one fellow named Albert, the names of the others unknown, claimed by A. T. Bennett, and claim bond taken and filed. Also two negroes, one man and one woman, levied on and claimed by James F. Farrior, and claim bond taken and filed.

(Signed) P. W. GAUTIER, JR., *Marshal*,
By his deputy, N. BAKER.

*Affidavit and claim bond of A. T. Bennett, referred to.*

TERRITORY OF FLORIDA,
*Franklin county.*

This day personally came before me, Nathan Baker, an acting justice of the peace in and for said county, Archibald T. Bennett, who being duly sworn deposeth and saith, that five negro children, five negro women, and four negro boys, and two fellows, levied [on] as the property of Warren Jordan by virtue of an attachment issued out of the superior court of Franklin county, by the marshal [of the] Appa-

lachicola district, at the suit of the Georgia Railroad and Banking Company, is not the property of said Jordan, but is his own bona fide right and property.

(Signed) A. T. BENNETT.

Sworn and subscribed before me, 10th day of May, A. D. 1842.

N. BAKER, *J. P.*

TERRITORY OF FLORIDA,
*Franklin county.*

Know all men by these presents, that we, Archibald T. Bennett James F. Farrior, and Hugh M. Farrior, are held and firmly bound unto the Georgia Railroad and Banking Company, in the penal sum of nine thousand two hundred dollars; for the true payment of which, we bind each of ourselves, and each of our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 10th day of May, A. D. 1842.

The condition of the above obligation is such, that whereas *that* an attachment was issued out of the superior court of Franklin county, on the sixth day of April, 1842, at the suit of the above mentioned Georgia Railroad and Banking Company, against Warren Jordan, directed to the marshal of the Appalachicola district, for the sum of five thousand dollars; and whereas Peter W. Gautier, jr., marshal of the Appalachicola district, by his deputy N. Baker, did levy the aforesaid writ of attachment on the 8th day of April, 1842, on the following negro slaves, to wit: five negro children, from two to five years old; five negro women, four negro boys, and two negro fellows, one woman named Jane, and her child; one negro woman named Clarissa; and one fellow named Albert, the names of the other negroes not known—which said property was claimed by the above bound Archibald T. Bennett, agreeable to the statutes in such cases made and provided:

Now, if the above bound Archibald T. Bennett shall produce and deliver the above named and described property upon demand of said officer, if the same shall be adjudged to be the property of the defendant in attachment, and to pay the plaintiff all damages which the jury, on the trial of the right of property, may find in his favor, if it should appear to the jury that such claim was interposed for the purpose of delay, then this obligation to be null and void, otherwise to remain in full force and virtue.

Given under our hand and seals, this day and date above written.

(Signed,) A. T. BENNETT, [SEAL.]
JAMES F. FARRIOR, [SEAL.]
H. W. FARRIOR. [SEAL.]

Signed, sealed and delivered in presence of—
N BAKER, *D. M.*

1904.

*Affidavit and bond of James F. Farrior referred to.*

TERRITORY OF FLORIDA,
*Franklin county.*

This day personally came before me, Nathan Baker, an acting justice of the peace in and for said county, James F. Farrior, who, being duly sworn, deposeth and saith, that one old negro man and one old negro woman, levied on by the marshal of the Appalachicola district, by virtue of an attachment, at the suit of the Georgia Railroad and Banking Company, against Warren Jordan, is not the property of said Jordan, but is the bona fide property of this deponent.

JAMES F. FARRIOR.

Sworn to and subscribed before me, 10th day of May, 1842.

N. BAKER, *J. P.*

TERRITORY OF FLORIDA,
*Franklin county.*

Know all men by these presents, that we, James F. Farrior, Hugh M. Farrior, and Archibald T. Bennett, are held and firmly bound unto the Georgia Railroad and Banking Company, in the penal sum of eight hundred dollars; for the true payment of which we bind each of ourselves, and each of our heirs, executors and administrators, jointly, firmly, and severally, by these presents. Sealed with our seals and dated 10th day of May, A. D. 1842.

The condition of the above obligation is such, that whereas a writ of attachment was issued from the superior court of Franklin county, on the sixth day of April, 1842, directed to the marshal of Appalachicola district, at the suit of the above mentioned Georgia Railroad and Banking Company, against Warren Jordan, for five thousand dollars; and whereas Peter W. Gautier, jr., marshal of the Appalachicola district, by his deputy N. Baker, did levy the said attachment on an old negro man and old negro woman, names unknown; and whereas the above property was claimed by the above bound James F. Farrior, agreeable to the statutes in such cases made and provided:

Now, if the above bound James F. Farrior shall produce and deliver the above described property on demand of the said officer, if the same should be adjudged to be the property of the defendants in attachment, and to pay the plaintiff all damages which the jury, on the trial of the right of property, may find in his favor, if it should appear to the jury that such claim was interposed for the purpose of delay, then this obligation to be null and void, otherwise to remain in full force and virtue.

Given under our hands and seals, this day and date before written.

JAMES F. FARRIOR, [SEAL.]
A. T BENNETT, [SEAL.]
H. M. FARRIOR. [SEAL.]

Signed, sealed, and delivered in presence of—
N. BAKER, *D. M.*

Afterwards, to wit, at a court held on the fourteenth day of April, of the year aforesaid, it appearing to the court that the defendants reside beyond the limits of Florida; on motion of A. G. Semmes and George S. Hawkins, esquires, counsel for plaintiff, that notice of the institution of the above suit be published in the Appalachicola Journal, in the terms prescribed by law.

The following petition was filed 10th December, 1842, by Farish Carter, assignee of the Georgia Railroad and Banking Company:

District of Appalachicola, Franklin superior court, fall term, 1842.

FRANKLIN COUNTY, *ss.*

THE GEORGIA Railroad and Banking Company
vs.
WARREN JORDAN.

*Petition to foreclose a mortgage.*

To the honorable Samuel W. Carmack, judge of said court.

The amended petition of Farish Carter respectfully sheweth: That since the institution of this suit, to foreclose said mortgage, all the right, title, and interest of the former petitioner, the Georgia Railroad and Banking Company, in and to said mortgage and the property therein conveyed, and the debt intended to be secured by said mortgage, has been assigned to this petitioner, Farish Carter, as more fully appears by the deed of assignment of said corporation herewith filed, sealed with its seal, and bearing date on the thirty-first day of May, A. D. 1842, and prayed to be taken as a part of this petition; and your petitioner prays that said suit may be continued to final decree and judgment for his use; further showing and your petitioner that at the time of filing said original petition one Hays Bowdre, then the agent for said original petitioner, made the necessary affidavit for obtaining an attachment to take possession of the negroes mentioned in said mortgage, and erroneously supposing that an amount of money had been paid, or was about to be paid, in Georgia, which never was paid, and wishing probably to be on the safe side in his affidavit, only made oath to the sum of five thousand dollars as due, and inserted that amount in his petition for forclosure, besides interest. And your petitioner now comes in his amended petition, and amends the said amount in said petition by inserting the sum of fifteen thousand six hundred and twenty-seven dollars, ($15,627,) as principal due, besides interest, which amounts, up to the seventh day of December, to the amount of eleven hundred and sixty-six dollars, ($1,166,) making an aggregate now due upon the said notes and mortgage, as your petitioner avers and makes oath to, of sixteen thousand seven hundred and eighty-three dollars, ($16,783,) now really and truly due and owing.

And petitioner further shows, that he has reason to believe that more of said slaves are now within the jurisdiction of this court than were attached by the original attachment, and is advised that it is pro-

per that a new attachment should issue upon all of said negroes which may be found to be levied upon, all for the large amount now proven to be due.

And petitioner further makes oath, that he has reason to fear that the said slaves in said mortgage mentioned will be concealed, so that the ordinary process of law cannot reach them, or that they will be removed beyond the jurisdiction of this court, and he therefore prays that an attachment may issue to the marshal, commanding him to take possession of said slaves in said mortgage mentioned, and them safely keep in his custody and possession until the judgment of foreclosure, or until the further order of the court in the premises, unless the same shall be replevied by good and sufficient securities according to law.

And your petitioner further prays, that the mortgager, and all persons claiming or to claim by, through, or under him, may be forever barred and foreclosed, of and from his or their equity of redemption in the said mortgaged negroes, and that petitioner have judgment for the amount of his said debt, principal and interest, and that execution go forth immediately for the amount of said judgment and interest thereon accruing, and costs, inasmuch as petitioner makes oath that he has good reason to believe that all of said negroes which may not be in the hands of the marshal by attachment will be removed by the defendants, or some other persons having possession of the same, from this Territory before said execution can be levied upon the same in the usual manner. And your petitioner will ever pray, &c.

(Signed) FARISH CARTER,
BROCKENBROUGH and HAWKINS,
*Solicitors for petitioner.*

Sworn to before me by the petitioner, Farish Carter, this tenth day of December, 1842.

(Signed) S. W. CARMACK, *Judge*.

GEORGIA.

Know all men by these presents, that the Georgia Railroad and Banking Company, for and in consideration of the sum of sixteen thousand one hundred and thirty-six dollars and thirty-nine cents, to them paid by Farish Carter, esquire, of Scotsboro', in said State, at or before the delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, assigned, and set over, unto the said Farish Carter, his heirs and assigns, a certain mortgage deed entered into on the thirtieth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, between Warren Jordan, of Hall county, in said State, as mortgager, and the said Georgia Railroad and Banking Company, as mortgagees, which said mortgage deed was recorded on the day and year aforesaid, in the clerk's office of the superior court of said county, in book E, folios 261 to 263; and on the sixteenth day of December in said year, in the county of Baker, in said

State, in the clerk's office of the superior court of the said last mentioned county, in book 7, on pages 181, 182, 183, 184, 185, and 186, as by reference thereto will appear.

Together with all the lands and negroes, houses and buildings therein mentioned and described, with rights, members, and appurtenances thereto belonging, and all the estate, right, title, and interest of the said Georgia Railroad and Banking Company therein: To have and to hold all and singular the premises hereby granted and assigned, unto the said Farish Carter, his heirs and assigns, forever, without recourse in any event to the said Georgia Railroad and Banking Company; subject, nevertheless, to the rights and equity of redemption of the within named Warren Jordan, his heirs and assigns in the same.

In witness whereof, John P. King hath signed these presents as president, and James Camak hath countersigned the same as cashier, of said Georgia Railroad and Banking Company, and affixed the seal of said corporation hereto, this thirty-first day of May, in the year of our Lord one thousand eight hundred and forty-two.

JOHN P. KING,
*President Geo. R. R. Banking Company.*

Signed by the said John P. King, as president, in our presence.
W. H. MAHARREY,
JOHN W. WILDE,
*Notary public.*

Corporation seal.

Countersigned by the said James Camak, cashier, and seal of said corporation hereto affixed in our presence, being first interlined in the first page.

Corporation seal.

JAMES CAMAK,
*Cashier Ga. R. R. & B. Co.*

JOHN REYNOLDS,
W. D. FULLTON,
*Notary public.*

(Endorsed:)

GEORGIA.

Recorded in clerk's office, Hall superior court, book F, pages 36 and 37.

E. M. JOHNSON, *Clerk.*

September 22, 1842.

I certify the above to be a true copy of the original assignment to Farish Carter, this day withdrawn from my office by leave of the court, December the thirty-first, 1842.

GEORGE F. BALTZELL,
Per W. VALLEAU, *D. C.*

1906.

AT CHAMBERS, *December* 10*th*, 1842.

Appalachicola district, Franklin superior court.

FARISH CARTER, assignee of the Georgia Railroad and Banking Company,
vs.
WARREN JORDAN

On reading the petition of Farish Carter, and his affidavit thereto appended, and exhibition of the assignments of the said Georgia Railroad and Banking Company, and said affidavits of Farish Carter, setting forth that he has reason to fear that the property (negroes) mortgaged by said Jordan to the said Railroad and Banking Company, of which he is the assignee, will be concealed, so that the ordinary process of law cannot reach it, or will be removed beyond the jurisdiction of this court; and the said Carter having also sworn, in his said petition and affidavit, that the sum of sixteen thousand seven hundred and eighty-three dollars, in principal and interest, is really and truly due him as assignee as aforesaid, and having also exhibited to the court the original mortgage sought to be foreclosed given by said Jordan, and the promissory note secured thereby, it is ordered that the prayer in said petition of foreclosure of said Carter for an attachment be granted, and that said attachment be issued forthwith by the clerk of the superior court of Franklin county, directed to the marshal of the district of Appalachicola, commanding him to attach, levy upon, and take into his possession and custody, the aforesaid negroes, as set forth in said morgage as aforesaid, or so many aforesaid negroes as will be sufficient to satisfy the debt or demand of said Carter, the petitioner, as sworn to as aforesaid, and the costs and charges of the proceedings, and the same safely keep until the foreclosure of said mortgage, and execution issued thereon, or until the further [order] of this court, unless sooner replevied by good and sufficient securities according to law; and further, that said writ be executed without delay, and return be made on the same, after execution made.

Witness our hand at chambers, the date first above written.

(Signed,) S. W. CARNACK, *Judge*.

In the name of the Territory of Florida, to the marshal of the Appalachicola district, greeting:

You are hereby commanded and required, by the order of the honorable Samuel W. Carmack, judge of the district of Appalachicola, to attach, levy upon, and take into your possession and custody, wheresoever the same may be found, the following negro slaves, to wit: Davy, (a carriage driver,) Albert, (house servant,) Richard, (shoe maker,) Cato, Coon, Ben, Charles, Billy, Tom, Abram, Allen, Henry, Jerry, (wagoner,) Jeffrey, Horace, Jack, Tom, (superior house carpenter,) Amos and Moses, (good house carpenters,) and Lane; also Isaac, Americus, Elias, Starling, Tom, and Rica, (six lads nearly grown;) Susan and her eight children, as follows, March, (grown,) Amelia, (nearly grown,) Rica, (plough boy,) Edenboro, Charlotte, Pompey,

Sarah, and William; Narcissa and her four children, Washington, Oliver, Darby, and Clement; Rachel and her two children, Abby and Grandison; Martha, (grown woman,) Daphney, Nancy, (two women,) Jenny and her child Caroline; Dinah and her four children, Irene, Antoinette, Marcus, and Avarilla; Penny, (woman,) Polly and her child, Rose and her seven children, Clarissa, Joe, Emeline, Camilla, Ellen, Araminta, and Angeline; two Sarahs, (women,) Patsey, (valuable cook,) Mary, house servant and seamstress,) Sally, (cook and washer,) Fada and Rhoda, (two women,) Harriet and her two children, Francis and Monroe; Cilla and her child Major; Gilbert, Ferrel, Andrew, (three lads;) which said slaves were mortgaged to the Georgia Railroad and Banking Company, and said mortgage assigned by said company to Farish Carter, or so many of said negro slaves as will be sufficient to satisfy the demand of said Farish Carter, under said mortgage, amounting to sixteen thousand seven hundred and eighty-three dollars, and the costs and charges of the proceedings; and the same safely keep until the foreclosure of said mortgage, and execution issue thereon, or until the further order of this court, unless sooner replevied by good and sufficient securities, according to law; and this writ you shall execute without delay, and make return thereof forthwith after the execution of the same.

Witness, George F. Baltzell, clerk of our superior court of Franklin county, district of Appalachicola, and also the seal of said [L. S.] court, this tenth day of December, 1842, and of the independence of the United States the sixty-seventh year.

Signed, GEORGE F. BALTZELL, *Clerk*.

Levied on the following negroes, taken possession of them December 10th, 1842, to wit:

Jef, a fellow, about 35 years old.
Joe, a fellow, about 20 years old.
Isaac, young fellow, 20.
Sam, a fellow, about 35 years old.
Rica, young fellow, about 17 years old.
Amos, a fellow, about 30 years old.
Allen, young fellow, 29 years old.
John, a fellow, about 40 years old.
Patsey, woman, 28 years old, and her child.
Sally, woman, about 40 years old.
Pink or Jinsey, woman, 22.
Pink's two children, Charles and Henry, 3 and 1 year old.
Dinah, woman, say 35.
Amarilla, girl, 5 or 6.
Fanny, 3 or 4.
Emeline, woman, 2.
Andrew, boy, 11.
Albert, 20.
Clarissa, 14.
Tom, old man.

Sarah, old woman.
Jane, girl, 18.
Her child Henry, 1.
December 11, levied on Cato, fellow, say 35 to 40.
Charles, fellow, 35 to 40.
Elias, fellow, 20.
Antoinette, girl, 7 or 8.
Irene, girl, 13.
Signed, HEZEKIAH HAWLEY,
*Marshal.*

STATE OF GEORGIA, *Baker county.*

Know all men by these presents, that I, Warren Jordan, of the town of Gainesville, county of Hall and State aforesaid, for divers good causes and considerations me hereunto moving, have made, ordained, and appointed, and by these presents do make, ordain, and appoint, Reuben Thornton, of the said town of Gainesville, county of Hall and State aforesaid, my true and lawful attorney, for me and in my name, and for my own proper benefit and behoof, to appear for me, and in my behalf and in my name, in all suits in either the superior or inferior courts of the county of Hall, or in any other county or counties in the State, and to plead and answer, prosecute or defend thereto, as fully and completely as if I had been present and done the same in person; and to do all other things for me and in my name, in said courts or any of them, that may be lawful for me to do were I present in any of said courts. I further constitute and appoint the said Reuben Thornton my agent and lawful attorney, generally to transact any and all business for me and in my name, which may exist between me and any other person or persons whatever; and which he, my said agent and attorney, may in his discretion think it necessary for my interest to be attended to by him, hereby clothing my said agent and attorney with full power to negotiate with and control for the sale of such portions of my property, in the neighborhood of Gainesville, to any person or persons whatever, and upon such terms and conditions as he, my agent and attorney, may think in his discretion to be for my interest. Also to negotiate with any bank or banks, person or persons, relative to any matter of interest whatever, in which I am directly or remotely concerned, hereby ratifying and confirming all that my said agent and attorney may do in any case whatever, with whomsoever it may be, in my name, by negotiation, contracts, or receipts, or in any other way, manner, or form whatever, as fully and completely as if I had been present and had done the same in person; and one or more attorneys under him to make for all the purposes aforesaid, and again at his pleasure to revoke, ratifying and confirming, and by these presents allowing, whatsoever my said attorney shall in my name lawfully do or cause to be done in and about the premises, and every part thereof, herein set forth by virtue of these presents.

In testimony whereof, I have hereunto set my hand and affixed my

seal, this twenty-eighth day of February, in the year one thousand eight hundred and forty-one.

WARREN JORDAN. [SEAL.]

Signed, sealed, and delivered, in the presence of—
ALFRED JAMES,
HURMAN MURCH, *J. P.*

STATE OF GEORGIA, *Hall county*.

I, E. Malone Johnson, clerk of the superior court of the county and State aforesaid, do hereby certify that I have this day recorded the above power of attorney in the clerk's office of Hall superior court, book E, page 383.

[SEAL.] Given under my hand and the court's seal of said office at office in Gainesville, this 22d day of March, A. D. 1841.

(Signed) E. MALONE JOHNSON, *Clerk*.

The above is a copy of the original, withdrawn by order of court, December 17th, 1842.

GEO. F. BALTZELL, *Clerk*.

STATE OF GEORGIA, *Hall county*.

This is to show and certify that I, Reuben Thornton, as the authorized agent and attorney, in fact, of Warren Jordan, by a power of attorney constituting me as such, entered on record in the county and State aforesaid, do by these presents grant to the Georgia Railroad and Banking Company full and ample power, in law and equity, to foreclose a mortgage against the said Jordan, executed by him to the said Georgia Railroad and Banking Company to secure a sum, now due thereon, of fifteen thousand dollars principal, as appears by note bearing date the first day of July, 1841, as also the further sum of six hundred and twenty-seven dollars, as specified by note of said date, which last mentioned note was given for interest on the principal sum prior to that time. Also whatever other interest may have accrued thereon upon the whole or any part of the property therein specified, either in the State of Georgia, or any State or Territory of the United States, wherever to be found, (some of the negroes already having been removed to the State of Alabama,) without the necessity of personal notice to the said Warren Jordan, waiving every objection in law or equity that could be made by him on that account: Provided, the said foreclosure is not for a greater amount than the sum due for the principal and interest on the notes above specified, and the costs that may necessarily accrue thereby. And I hereby waive all and every other error except as to said amount, and all technical and formal objections which might be in any manner taken to the same at any time, and covenant for said Jordan with said Railroad and Banking Company and its assigns, not to bring any writ of error or bill in chancery, or to appeal in any such case whatsoever, wheresoever the same may be insti-

tuted or prosecuted, and whether such proceedings are now commenced or may hereafter be commenced.

Witness my hand and seal this first day of February, 1842.

REUBEN THORNTON, [SEAL.]
*Authorized agent of Warren Jordan.*

The notes filed with the amended petition, and referred to above, follows:

$15,000.

Six months after date, I promise to pay to the order of Reuben Thornton, at the bank of the Georgia Railroad and Banking Company, in Athens, fifteen thousand dollars. Value received.

*July* 1, 1841. WARREN JORDAN.

Noted and protested for non-payment.

W. D. F., *N. P.*

Endorsed, REUBEN THORNTON.

$627 00.

Six months after date I promise to pay to the order of Reuben Thornton, at the bank of the Georgia Railroad Bank, at Athens, six hundred and twenty-seven dollars, for value received.

*July* 1, 1841. WARREN JORDAN.

Endorsed, REUBEN THORNTON.

Noted and protested for non-payment.

W. D. T., *N. P.*

*January* 4, 1842.

I, George F. Baltzell, clerk of the superior court of Franklin county, Florida, do hereby certify, that the above are true copies of the originals, withdrawn by order of court in the case of F. Carter, assignee Georgia Railroad and Banking Company, vs. Warren Jordan, on petition to foreclose mortgage, this 9th January, 1843.

GEO. F. BALTZELL, *Clerk.*

And now at this day, to wit, the day and year first above written, on exhibition to the court of the original petition filed in this case, and the amended petition of Farish Carter, assignee, and the deed of assignment of the Georgia Railroad and Banking Company to Farish Carter, and the original mortgage and notes of Warren Jordan; and it being shown, to the satisfaction of the court, that due and legal and sufficient publication of notice, by publication in a newspaper published in Appalachicola, has been made as the law requires, and no person having appeared according to law to control the right of petitioner to foreclose, and upon exhibition of the power of attorney of Warren Jordan to Reuben Thornton, giving said Thornton full power to act in all matters for said Jordan, and a note in writing from said Thornton, admitting the amount due, and consenting to the foreclosure; and upon

reading the affidavit of said Farish Carter in his petition contained, whereby it appears that the amount of the principal and interest now due upon said mortgage and notes, amounts to the sum of sixteen thousand seven hundred and eighty-three dollars, ($16,783,) the court doth adjudge, order, and decree, that the mortgager, and all persons claiming or to claim by, through, or under him, shall be, and are forever foreclosed and barred of and from his, her, or their equity of redemption in the negroes mentioned in said mortgage, and their increase; and that judgment shall be, and is hereby, entered up in favor of said Georgia Railroad and Banking Company, for the use of Farish Carter, assignee, against the said Warren Jordan, for the sum of sixteen thousand seven hundred and eighty-three dollars, and his costs by him about his suit in this behalf expended.

And the court doth further adjudge, order, and decree, that execution go forth according to law, and be levied upon said mortgaged negroes, or such of them as may be found in this Territory; and if they be insufficient, in the opinion of the said marshal, to satisfy said judgment herein given, with accruing interest and costs, that said execution be also levied upon any other property or estate, real or personal, of said Jordan, which may be found in this Territory, and that said mortgaged property be first sold, and, if insufficient to satisfy said judgment herein given, then that such other property as may be found be sold until said judgment, interests, and costs shall be fully satisfied. But if said mortgaged property, or any amount less than the whole, shall be sufficient to satisfy said judgment, accruing interest, and costs, then said marshal shall release or pay over any surplus in his hands to the parties entitled by law to receive the same; said sales to be for cash, and after notice, as in case of other executions, unless otherwise ordered by the court.

The petition of Farish Carter respectfully showeth, that, under an attachment awarded to him in said case, divers negroes have been levied upon by the marshal, as will appear by his return; that said negroes are retained by the marshal in his custody, at very great expense for their support and maintenance, and for guards and loss of service, so that they are perishable property, value daily perishing in expenses, to say nothing of risk of their getting off, and loss of life; and as no party from whose possession they have been taken has interfered, but, on the contrary, by counsel in open court expressly declined, and as the attorney of Warren Jordan, acting under a power in this case filed, expressly consents to such a course by the paper writing herewith filed, and the same is manifestly to the interest and advantage of all parties concerned: Your petitioner prays your honor, that all of said slaves included in said mortgage be ordered by your honor to be sold, to satisfy the judgment of foreclosure of mortgage in this case entered up, and all costs, at as early a day as your honor may think sufficient, notice may be given in this small and concentrated community, and that execution immediately issue, and the proceeds of said sale be in con-

formity with the judgment and decree before signed by your honor; and your petitioner, as in duty bound, will ever pray.

FARISH CARTER.

BROCKENBROUGH & HAWKINS.

Sworn and subscribed in open court, this 15th December, 1842.

GEO. F. BALTZELL, *Clerk*.

Whereas, by a decree of the honorable district court for this district, in a case for the foreclosure of a mortgage in favor of the Georgia Railroad and Banking Company vs. Warren Jordan, certain negroes therein named and specified have been ordered to be levied upon and sold by the marshal. And whereas, the said negroes being now in the custody of the marshal at a considerable daily expense, which must be injurious to all parties concerned, I, therefore, as the authorized agent of Warren Jordan, waive the necessity of the regular time and process of advertising that is required by law, and hereby consent that the said negroes may be sold at such time and manner as the court may think proper to order, provided no more are sold than may be sufficient to satisfy said mortgage and costs.

REUBEN THORNTON,
*Authorized agent of Warren Jordan.*

14th December, 1842.

Afterwards, to wit, on the day of December, of the year aforesaid, upon motion of complainant, by his counsel, and upon exhibition of a proper and sufficient affidavit by complainant, Farish Carter, setting forth the perishable nature of the property levied upon to the satisfaction of the court, and also satisfying the court, by affidavit, that he has good reason to believe that the property attached will be removed from the Territory before the same can be levied upon in the usual manner, if not retained in the hands of the marshal; and it appearing to the satisfaction of the court that Reuben Thornton, the attorney in fact of Warren Jordan, consents to a sale at an earlier period than the law directs in usual cases, to avoid expense, and on account of the perishable nature of the property: The court doth, therefore, order that the marshal immediately give public notice, in all the usual modes, that said slaves in said mortgage mentioned will be sold at public auction, at some place which he may designate in the city of Appalachicola, on Saturday, the 31st day of December instant, for cash; and that he shall then and there proceed to sell, for cash, the whole of said slaves, or such number as may be sufficient to pay the debt, interest and costs, of complainants, in conformity with the decree in this case entered.

And it is further ordered, that execution shall be immediately issued in said case, and levied by said marshal on all the property of Warren Jordan which may be in this district, and be otherwise followed out according to law, and the decree before given in this cause.

Whereupon the following execution issued herein, to wit:

In the name of the Territory of Florida, to the marshal of the Appalachicola district, greeting:

We command you, that you expose to sale on Saturday, the thirty-first day of December inst., the following negro slaves, to wit: Jeffa, Isaac, Rica, Allen, Tom, Cato, Charles, Elias, John, Joe, Sam, Amos, Patsey and her child, a boy; Sally, Pink or Jinsey, and her two children, Charles and Henry; Dinah, Avarilla, Fanny, Emeline, Andrew, Albert, Tom, an old man; Sarah, Irene, Antoinette, Clarissa, Camilla, Nancy and infant, and Ellen, which were mortgaged to the Georgia Railroad and Banking Company, Farish Carter, assignee, and which, by the decree of our court, were ordered to be sold to pay the said Farish Carter, assignee as aforesaid, the sum of sixteen thousand seven hundred and eighty-three dollars, with interest thereon at the rate of eight per cent. per annum, from the sixteenth day of December, 1842, until paid, also $6 75 costs; and that you make the residue of the said sum of money of the goods and chattels, lands and tenements, of said Warren Jordan, if any there be found within your bailiwick, and make due return hereof so soon as you shall execute the same; and have then and there this writ.

Witness George F. Baltzell, clerk of our said court, at Appalachicola, this the 16th day of December, A. D. 1842.

[L. S.]

GEO. F. BALTZELL, *Clerk.*

Executed, by levying on the following named negroes, to wit: Jeffa, Isaac, Rica, Allen, Tom, Cato, Charles, Elias, John, Joe, Sam, Amos, Patsey and child; Sally, Pink or Jinsey, and two children, Charles and Henry; Dinah, Amarilla, Fanny, Emeline, Andrew, Albert, Tom, old man, Sarah his wife; Irene, Antoinette, Clarissa, Camilla, Jane, and child.

H. HAWLEY, *Marshal,*
Per R. J. YOUNG, *Dep. marshal.*

December 16, 1842.

Executed, by levying on the named negroes, to wit, Nancy and her child, Ellen.

Dec. 20, 1842. H. HAWLEY, *Marshal.*

The following affidavit and claim bond were interposed by A. T. Bennett:

TERRITORY OF FLORIDA,
*Franklin county, to wit:*

Before me, the subscriber, came Archibald T. Bennett, who, being duly sworn, saith, that negroes Jef, Allen, John, Joe, Amos, Patty, and her child a year old; Sally, Albert, Cato, Antoinette, Irene, and Isaac, are the property of, and belong to, affiant, being levied on by execution in behalf of Farish Carter, assignee of the Georgia Railroad

and Banking Company against Warren Jordan, issued from the superior court of Franklin county. A. T. BENNETT.

Sworn to this 16th day of December, 1842, before me,
GEORGE F. BALTZELL, *Clerk*,
Per W. VALLEAU, *D. C.*

Know all men by these presents, that we, Archibald T. Bennett and , are held and firmly bound unto Farish Carter, assignee of the Georgia Railroad and Banking Company, in the penal sum of fifteen thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, this the sixteenth day of December, in the year of our Lord [one] thousand eight hundred and forty two.

The condition of the above obligation is such, that whereas the said Georgia Railroad and Banking Company, and said Carter, assignee, has sued out an execution from the superior court of Franklin county, against the goods, &c., of Warren Jordan, which has been levied upon negroes, to wit, Jeffa, Allen, John, Joe, Amos, Patsey, and her child about one year old; Sally, Albert, Cato, Antoinette, Irene, and Isaac.

Now, if the said Archibald T. Bennett will deliver the said goods and chattels, the said negroes included in the said levy, upon demand of the marshal of this district, if the same shall be adjudged to be the property of the said plaintiff, and pay all damages which the jury, on the trial of the right of property, may find in his favor, if it should appear to the jury that the claim was interposed for delay, then this obligation to be void, otherwise to be in full force and virtue.

A. T. BENNETT, [SEAL.]
JAMES F. FARRIOR, [SEAL.]
E. C. ROBERTS, [SEAL.]
H. M. FARRIOR, [SEAL.]
WM. H. STARK, [SEAL.]
MARVIN B. AVERY. [SEAL.]

The following claim, affidavit, and bond, were filed by E. C. Roberts, to wit:

TERRITORY OF FLORIDA,
*Franklin county, to wit:*

Before me, the subscriber, came Enoch C. Roberts, one of the firm of Roberts, Allen & Co., who, being duly sworn, saith that the negroes, Jane, and her child Henry, levied upon as the property of Warren Jordan, by suit in attachment in favor of Farish Carter, are the property of said firm, and belong to them, and not to the said Jordan.

E. C. ROBERTS.

Sworn and subscribed before me, this 16th December, 1842.
GEORGE F. BALTZELL, *Clerk*,
By WILLIAM VALLEAU, *D. C.*

Know all men by these presents, that we, Enoch C. Roberts and , are held and firmly bound unto Farish Carter, assignee of the Georgia Railroad and Banking Company, in the just and full sum of sixteen hundred dollars, to the payment whereof we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents. Signed and sealed this the day of December, 1842.

The condition of this obligation is such, that whereas the said E. C. Roberts is about filing a claim to certain negroes levied upon by the marshal of the Appalachicola district, at the suit of Farish Carter, assignee of the Georgia Railroad and Banking Company, against Warren Jordan, from the Franklin superior court, the negroes being Jane and child Henry.

Now, if the said Roberts shall deliver the said negroes, Jane and her child Henry, upon demand of the marshal of the district, if the same shall be adjudged to be the property of said plaintiff, and pay all damages which the jury, on the trial of the right of property, may find in his favor, if it shall appear that the claim was interposed for delay, then this obligation to be void, else to remain in full force and virtue.

E. C. ROBERTS, [SEAL.]
A. T. BENNETT, [SEAL.]
JAS. F. FARRIOR. [SEAL.]

To the honorable Samuel W. Carmack, judge of the Franklin superior court.

The petition of Enoch C. Roberts respectfully showeth, that he has made his affidavit, asserting a claim to two negroes, Henry and Jane, levied upon as the property of Warren Jordan, by suit in attachment in favor of Farish Carter; that he presented a claim bond to the marshal of this district, to the amount of double the value of the property, which the marshal has refused, on the ground that double the amount of the execution, to wit, $33,566, is the sum for which the bond should be given, and that no other would be received. He, therefore, prays a rule on the marshal, compelling him to receive the said bond.

THOMAS BALTZELL,
*Attorney for plaintiff.*

Afterwards, to wit, on the sixteenth day of the month and year last aforesaid, on motion, it is ordered that the marshal show cause why he does not take the bond offered to him by claimant in this case, and surrender to them the property levied on under execution by him; and on reading and filing the return made by the marshal, it is ordered that the rule nisi entered against him be discharged.

And it is further ordered, that the time of the sale of the negroes, that are sworn to in claimant's affidavit as belonging to them, be extended to Monday, the ninth day of January.

Rule vs. the marshal, H. Hawley, to show cause why he should not take the bond tendered to him.

And to the rule he answers, that, with all respect to the court, he

states that he is advised by counsel that he is responsible, if he takes insufficient security, or securities otherwise than is required by [law,] and that the court cannot relieve him from such, his responsibility, by rule or otherwise.

2d. He replies, that he holds the said negroes under an execution for the sum of sixteen thousand seven hundred and eighty-three dollars and costs, in favor of Farish Carter, and that the law requires that parties claiming property so levied upon, shall make oath and give bond in double the amount of execution, and the bonds offered are not in double the amount of the execution.

3d. That the bonds offered are insufficient for the amount in them stated, if the amount was sufficient, and the marshal would not take the persons named on said bonds as security for the sums specified in said bonds.

4th. R. J. Floyd, one of the attorneys of this court, is one of the securities on one of said bonds, which the law does not allow.

5th. That said bonds offered are informal, insufficient, and unlawful in other respects, and do not constitute a safe bond to save the marshal harmless.

All of which is respectfully submitted.

HEZEKIAH HAWLEY, *Marshal.*

Afterwards, to wit, on the seventeenth day of December, of the year aforesaid, on motion, it is ordered that plaintiff have leave to withdraw original notes and mortgage, with the assignment to Farish Carter, upon leaving certified copies with the clerk, and the power of attorney of defendant to Reuben Thornton.

Afterwards, to wit, on the eighteenth day of December, of the year last aforesaid, on motion of counsel for plaintiff, and it appearing that no return has been made on the writ of execution issued in this case, setting forth the divers amounts for which certain negro slaves were sold under the same; and it further appearing, by evidence under oath, that the late marshal, Hezekiah Hawley, esq., died some time in the month of March last, and before the return day of the execution, and that his book and account of sales of said negroes were placed in the hands of his brother, B. S. Hawley, before the death of said marshal, and have ever since been in the possession of the said Benjamin: It is ordered that the clerk of this court endorse on the execution issued in above cause the names of the several negroes sold, the amount for which they severally sold, and the names of the purchasers, and that the aggregate sum of said sale be endorsed on the writ.

*Tax bill of costs.*

| | |
|---|---|
| For Porter's bill of blankets - - - - | $6 00 |
| " 2 cords of wood - - - - - | 10 00 |
| " Nelson Hawley's bill - - - - | 86 00 |
| " bill for shoes - - - - - - | 5 50 |
| " Robert Myers, rent of house - - - | 240 00 |

| | | |
|---|---|---|
| For Benjamin Hurd, bill feeding - - - | 155 35 | |
| " hire of 2 men as guard, $3—30 days - - | 180 00 | |
| " hire eight men to take negroes - - - | 40 00 | |
| " printer's bill - - - - - - | 50 00 | |
| " clerk's bill of cost - - - - - | 18 75 | |
| | | $791 60 |

*Marshal's fees.*

| | | |
|---|---|---|
| For serving attachment - - - - | $1 00 | |
| " levying execution - - - - - | 1 00 | |
| " 2 bills of sale, each $2 - - - - | 4 00 | |
| " commissions on $9,384 00—$300 00, at 5 per cent. - - - - - - | 15 00 | |
| " commissions on $9,084, at 2½ per cent. - | 227 10 | |
| " mileage in service of attachment—300 miles, at 4 cents - - - - - - | 12 00 | |
| " hire of 2 men 6 days, at $3 per day each - | 36 00 | |
| | | 296 10 |
| Whole amount - - - | | $1,087 70 |

TERRITORY OF FLORIDA,
*Franklin county, ss.*

I, George F. Baltzell, clerk of the superior court of said county, do hereby certify, that the foregoing pages contain true copies of the papers filed in the case of Farish Carter, assignee of Georgia Railroad and Banking Company, vs. Warren Jordan, on foreclosure of mortgage, together with copies of the orders and decree entered in said case, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand, and [L. S.] affixed the seal of said court, at Appalachicola, this 12th May, 1844.

GEO. F. BALTZELL, *Clerk*.

8th. He next read the following original notice in that case as printed, with the printer's affidavit of publication according to law. Said printed notice signed A. G. Semmes and George S. Hawkins, and which was accidentally omitted in copying the record.

GEORGIA RAILROAD AND BANKING COMPANY
vs.
WARREN JORDAN. } Fall term, 1842.

The defendants, and all others interested, will take notice of the filing of a petition in the above stated case in the office of the clerk of the superior court, in the county of Franklin, for the purpose of foreclosing a mortgage deed, made and executed by defendant to the plaintiff, on the thirtieth day of October, 1839, on the following negro

slaves, to wit: Davy, a coachman; Albert, a house servant; Richard, a shoemaker; Cato, Ben, Coon, Charles, Abram, Billy, Tom, Allen, Henry, Ivey, a wagoner; Jeffrey, Horace, Jack, Tom, a superior house carpenter; Amos, Moses, good house capenters; and Lane—making 24 fellows. Also Isaac, Americus, Elias, Starling, Tom, and Rica, six lads, nearly grown. Susan and her eight children, namely, Mariah, grown; Amelia, nearly grown; Rica, plow boy; Edenboro, Charlotte, Sarah, Pompey, and William; Narcissa [and] her four children, viz: Washington, Oliver, Darby, and Clement; Dinah and her four children, viz: Irene, Antoinette, Marcus, and Avarilla; Rachel and her two children, Grandison and Abby; Martha, a grown woman; Jinney and her child Caroline; Daphney, Nancy, and Penny, three women; Patty and her child; Rose and her seven children, viz: Clarissa, Joe, Emeline, Camilla, Ellen, Araminta, and Angeline; two Sarahs, women; Patsey, a valuable cook; Mary, a house servant and seamstress; Sarah, a cook and washer; Fada and Rhoda, two women; Harriet and her two children, Francis and Monroe; Cilla and her child, Major; Gilbert, Terrel, and Andrew, three lads; as well as real estate, situated in the State of Georgia, &c., to secure originally the sum of $22,500; and that a judgment of foreclosure will be prayed for as to said personal property, at the next fall term of said superior court.

A. G. SEMMES,
GEORGE S. HAWKINS,
*Attorneys for petitioners.*

Appalachicola, July 5, 1842.

The above advertisement has been published in the Appalachicola Journal from the 5th July to the 17th December, 1842.

E. AUGUSTUS WARE,
Per E. S. WARE.

Sworn to before me, this 17th December, 1842.

G. F. BALTZELL, *Clerk*,
Per W. VALLEAU, *D. C.*

9th. He next read the following deposition of Richard H. Long.

Interrogatories to be propounded to Richard H. Long and Felix H. G. Long, material witnesses for defendant, residing beyond the limits of the said State of Florida.

1st. Do you know the parties?

2d. Were you present at two different sales of negroes by the marshal of the Appalachicola district of Florida, the one sale on the 31st day of December, 1842, and the other on the 9th day of January, 1843? If yea, state as whose property, and under what circumstances, they were sold; who became the purchaser, and into whose possession did they go after the sale. This interrogatory to be addressed to Richard H. Long; also the next.

3d. If the defendant, or you as his agent, purchased any of said negroes, please state the names, description, age, and value of each of them, and the value of their hire per annum, from the time the same went out of your possession until the present time.

4th. To both witnesses. Please state if said negroes, or any of them, ever went into the possession of the plaintiff. If yea, when and how. Relate fully and particularly all the circumstances under which plaintiff took possession of said negroes; what disposition has he since made of them. State the names, ages, value, and description of each of the negroes which were purchased by the defendant, or by you as his agent, and which subsequently went into the possession of plaintiff.

5th. State all that you know, or each of you know, that will benefit the defendant in this suit, as if particularly interrogated thereto.

R. J. MOSES,
CARAWAY SMITH,
*Attorneys for defendant.*

*Cross interrogatories.*

First for Richard H. Long. Please state whether you did not purchase said negroes at said sales in your own name, and were they not delivered to you by the marshal.

Second for Richard H. Long. Did you or not execute and deliver to said defendant after said sales, a mortgage on said negroes so purchased? If yea, was it ever recorded in Jackson county where you reside, and state whether you ever gave any other mortgage to said defendant on said negroes, and which has been recorded in Jackson county.

Third for Richard H. Long. Were you or not present in Appalachicola when defendant Carter was tried before the superior court for Franklin county on account of taking a portion of these negroes from Florida? If yea, did you or not attend as a witness at said trial, and did you or not give your testimony on said trial? If yea, did you or not state on said trial that defendant Carter had no interest whatever in said slaves; that the said slaves at said sales were purchased by you in your own right, and that there was no understanding between you and Carter as to said purchase? State fully and particularly in regard to this matter.

Fourth for Richard H. Long. If you answer to direct interrogatory that plaintiff got some of these negroes from your possession, then state whether you did not have a suit or suits in trover instituted against plaintiff for these identical negroes, and is or not said suit or suits now pending?

Fifth for Richard H. Long. Do you or not know of defendant Carter instituting a suit in trover against plaintiff in Columbus, Ga., for the said negro slaves said to have been taken by Bennett from your possession in Jackson county? If they were not the same ne-

groes, then state what negroes they were, their description, age, &c. State whether your testimony in said case was not taken by interrogatories, and if so, state fully and particularly what your answers were to said interrogatories.

Sixth for Richard H. Long. State whether you did not repeatedly state in Appalachicola, subsequent to said sales, that you had bought the said negroes on your own account, and in your own right, and for your own benefit, and that Carter was in no way concerned or interested in said purchase. Upon this point state fully.

Seventh for each witness. State all you know that will benefit plaintiff.

Eighth. State whether each of you are not very unfriendly to plaintiff.

A. G. SEMMES,
W. G. M. DAVIS,
*Attorneys for plaintiff.*

To save the trouble of suing out the same interrogatories, we agree that these may be used in the case of Roberts, Allen & Co. Also in the cases wherein Farish Carter is plaintiff. Said agreement not to waive any right on the part of plaintiff to object to their admission, or any other rights whatever.

CARAWAY SMITH,
*For defendant.*
A. G. SEMMES,
*For plaintiff.*

Before the undersigned, commissioners appointed by virtue of the annexed commission from the circuit court of Franklin county, personally came Richard H. Long and Felix H. G. Long, the witnesses named in said commission, who, after being duly sworn, were examined upon the annexed direct and cross interrogatories, and answered as follows:

To the first direct interrogatory Richard H. Long answering says: He does.

To the second direct interrogatory this witness answering says: That he was present at Appalachicola, in the county of Franklin, when two lots of negroes were sold as the property of Warren Jordan, by the marshal of the Appalachicola district, by virtue, as he understood, of a writ of venditioni exponas, issued from and under the seal of the superior court, under a foreclosure of a mortgage given by said Jordan to the Georgia Railroad and Banking Company, and by it transferred to Farish Carter; the first sale was on the 31st December, 1842, the second on the 9th of January, 1843; the sale of the property was resisted with much violence by the defendant; at the instance, and for the benefit of the defendant, I became the purchaser of the negroes; the titles were taken in witnesses name, and came into his possession for two reasons; the first, because it was believed by some persons that

if the negroes were removed, under the circumstances, without the jurisciction of the district, the removal might affect the title of the purchaser, and make him liable to an indictment; the second, because the defendant was willing, as he had understood that the plaintiff had been unable to give the requisite security, that he might have his claim to the property investigated, to place the property within the district in such situation as would afford him the opportunity of doing so; at the time of the sale, and immediately after the purchase, I gave notice publicly that the negroes would be removed to my plantation in Jackson county, where I would be ready to defend any suit in law or in equity which any claimant might desire to commence against me for their recovery, for I had understood that Roberts, Allen & Co., claimed Irene and her child, and that James Farrior claimed old Tom, Sarah, and Camilla, neither of whom (that I heard) was at the time claimed by plaintiff.

To the 3d direct interrogatory this witness answering says: I have stated in my answer to the 2d direct interrogatory the manner and circumstances under which I purchased the two lots of negroes at marshal's sale; among those purchased were the following, all of whom were taken out of my possession by the plaintiff, to wit: Cato, a black fellow, about forty-five years of age; Elias, about twenty years; Sam, about thirty; John, a mulatto, about forty-five; Dinah, his wife, a black woman, about thirty-eight, and her children—Annett about eight years, Avarilla, about six, Fanny, about four, and Emeline, about two years; Jane, a mulatto woman, about twenty years old, and her infant child, Henry; Nancy, about thirty-five years old, and her infant child, Enoch; Camilla, a girl eleven years old, claimed by James Farrior, and two children, Charles, about four years, and Henry, about two. As to the value and hire of said negroes I consider that Cato was worth four hundred dollars, and his hire to be worth seventy-five dollars per year; Elias, worth four hundred and fifty dollars, his hire eighty dollars per year; Sam, an idiot, worth one hundred dollars *per year*, his hire but little, say ten dollars per year; Dinah, and her children, Antoinette, Amarilla, Fanny, and Emeline, worth nine hundred and fifty dollars, their hire worth fifty dollars per year; Jane, and her child, worth five hundred dollars, hire fifty dollars; Camilla, worth three hundred and fifty dollars, her hire worth twenty-five dollars per year; Charles and Henry, worth two hundred and fifty dollars, hire nothing.

To the fourth direct interrogatory the witness answering says: That the plaintiff, with a band of armed men, took possession of [and] carried off by force the negroes described in his answer to the third direct interrogatory on the night of the 17th of April, 1843, as well as this witness now recollects. I saw him; and, upon inquiry being made, he gave his name, and upon moving towards him he fired a gun. I went among his party, and I can say that I saw and knew that it was the defendant, and that there were five or six other men with him; he said that he had come for the purpose of taking the ne-

groes, and that he had men enough to do so. I do not know, of my own knowledge, what disposition the plaintiff made of the negroes. I know that Nancy and her child were in the possession of Elijah Robins of this county, and that Camilla was in the possession of Nathan Baker during his residence in Jackson county, and, as I have understood, they were purchased by them from the plaintiff. I have stated, in my answer to the third direct interrogatory, the names, description, and value of the negroes taken out of my possession.

To the fifth direct interrogatory this witness answering says: He has stated all he knows that will benefit the defendant.

To first cross interrogatory the witness answering says: I purchased the negroes at the instance and request of the defendant, and for his benefit. The negroes were delivered to me by the marshal.

To the second cross interrogatory this witness answering says: I did execute and deliver to the defendant a mortgage of said negroes to secure the payment of a note given him, and, if I recollect rightly, reserved in the mortgage the right of reconveying the whole or any part of the negroes in full or in part payment of said note; and on the same day, and at the same time, a covenant was made by me with the defendant, in which I was bound to reconvey at any time the said negroes, or any part thereof, to such person or persons as might be directed by the said Carter; the mortgage may have been recorded; I have not seen the record; I am inclined to think it was. Since the taking of the negroes by the plaintiff the mortgage and note have been cancelled. I considered the mortgage and note, when given by me to the defendant, as only intended to secure to him the return of the property without loss to me; had I thought or believed otherwise, I would not have given the mortgage or note after the plaintiff's violent conduct in attempting to rescue the negroes at the bay and on the river; the mortgage and the note were given after the violence alluded to; I gave no other mortgage on the negroes.

To third cross interrogatory: I was at Appalachicola at the trial of the defendant, Carter, on indictment for taking other negroes purchased at the sale before mentioned, not those taken from my house by the plaintiff, and was sworn as a witness and gave testimony. I have no recollection whatever of having stated in my evidence that Carter had no interest in said slaves, and that said slaves were purchased by me in my own right, and that there was no understanding between him and me on the subject; nor do I believe that any question was suggested to me which would have induced such an answer, or which involved the question of title; if there was, I have not the least recollection of it.

Answer to 4th cross interrogatory. I never did commence a suit or suits in trover for the negroes, and if a suit or suits in my name was commenced, it has not been with my knowledge, and I have yet to learn the fact. I, therefore, know nothing of one's being now pending; the plaintiffs, Roberts, Allen, and James Farrior, did each com-

mence their action of trover in Jackson superior court against me for the negroes in question, two of which, I believe, are now pending.

Answer to 5th cross interrogatory. I have understood that the defendant had commenced a suit in trover against the plaintiff in Columbus, Georgia, for the same negroes taken by plaintiff out of my possession, and am satisfied that such was the fact from interrogatories exhibited to me in the case. My answers to the foregoing interrogatories contain substantially, to the best of my knowledge and belief, the answers which I made to the interrogatories issued in the case in Columbus, Georgia.

Answer to 6th cross interrogatory. I have no recollection at this time of having stated at Appalachicola, subsequent to the sale, that I had bought the negroes on my own account and in my own right, and for my own benefit. It is very probable that I might have said enough on the subject to have induced such a belief.

Answer to 7th cross interrogatory. I have stated all I recollect, which will make in favor of the plaintiff.

Answer to 8th cross interrogatory. I have no particular dislike or affection for the plaintiff. RICHARD H. LONG.

Sworn to and subscribed before us, this 6th day of February, A. D. 1847.

J. J. FINLEY, [SEAL.]
RICHARD L. CAMPBELL, [SEAL.]
*Commissioners.*

10th. He next read the following exemplification of a record from the superior court of Muscogee county, Georgia, of adjudication in an action of trover, between Farish Carter, as plaintiff, and Archibald T. Bennett, defendant:

GEORGIA, *Muscogee county.*

To the honorable superior court of said county.

The petition of Farish Carter showeth, that Archibald T. Bennett, of said county, has injured and damaged your petitioner in the sum of sixteen thousand dollars; for that whereas the said plaintiff, your petitioner, heretofore, to wit, on the first day of May, in the year eighteen hundred and forty-four, to wit, in said county, was lawfully possessed of his own property of certain negro slaves, to wit—

Cato, a man, of the age of 28 years, of dark complexion, and of the value of $1,000.

Elias, a man, of the age of 24 years, of the like complexion, and of the value of $1,000.

Sam, of the age of 46 years, and of the like complexion, and valued at $1,000.

John, of the age of 24 years, and of like complexion, and of the value of $1,000.

Dinah, a woman, of the age of 23 years, of the like complexion, and of the value of $800.

Amanda, the girl child of Dinah, of the age of 6 years, of like complexion, and of the value of $400.

Fanny, a girl child of Dinah, of like complexion, and of the age of 4 years, and of the value of $400.

Emeline, a girl child of Dinah, of like complexion, of the age of 2 years, and of the value of $300.

An infant child of said Dinah, of the value of $200, whose name, age and sex, [are] unknown.

Jane, a woman, of the age of 21 years, of like complexion, and of the value of $1,000.

An infant child of said Jane, of the value of $200, whose name, sex, and age are unknown.

Nancy, a woman, aged 20 years, of like complexion, and of the value of $1,000.

An infant child of said Nancy, of the value of $200, whose name, age and sex are unknown.

Camilla, a girl, aged about 12 years, of like complexion, and of the value of $600.

Charles, a boy, aged about 9 years, of like complexion, and of the value of $600.

Annett, a girl, of the age of 4 years, and of like complexion, and value of $300; and being so possessed thereof, your petitioner afterwards, to wit, on the day and year aforesaid, to wit, in said county, casually lost the said negro slaves out of his possession, and the same afterwards, to wit, on the day and year first aforesaid, to wit, in said county, came into possession of the said defendant by finding.

*Amendment.*

And whereas also, afterwards, to wit, on the first day of May, in the year first aforesaid, to wit, in the county aforesaid, your petitioner was lawfully possessed, as of his own property, of certain other negro slaves, to wit, Cato, a black man, of the age of forty-five years, and of the value of one thousand dollars; and Elias, a black man, of the age of twenty years, and of the value of one thousand dollars; and Sam, a black man, of the age of thirty years, and of the value of one thousand dollars; and John, a mulatto man, of the age of forty-five years, and of the value of one thousand dollars; and Dinah, a black woman, of the age of thirty-eight years, and of the value of one thousand dollars; and her four children, to wit, Annett, aged eight years, and of the value of five hundred dollars, and of yellow complexion; and Amanda, aged six years, of the value of five hundred dollars, and of yellow complexion; and Fanny, of the value of five hundred dollars, and aged four years, and of yellow complexion; and Emeline, of the value of five hundred dollars, of yellow complexion, and aged two years; and Jane, a mulatto female, of the age of twenty years, and of the value of one thousand dollars; and Henry, infant child of Jane,

aged one year, and of the value of five hundred dollars; and Nancy, a yellow woman, aged thirty-five years, and of the value of one thousand dollars; and Enoch, the child of Nancy, aged five years, and of the value of five hundred dollars; and Camilla, a dark girl, aged ten years, and of the value of one thousand dollars; and Charles, a dark boy, aged four years, and of the value of five hundred dollars; and Henry Allen, a boy of dark complexion, of the age of two years, and of the value of five hundred dollars; and being so possessed thereof, your petitioner afterwards, to wit, on the day and year last aforesaid, to wit, in said county, casually lost the said several negroes out of his possession, and the same afterwards, to wit, on the day and year last aforesaid, to wit, in said county, came to the possession of the said defendant by finding. Yet the said defendant, well knowing the several negro slaves to be the property of your petitioner, and of right to belong and appertain to him, but intending to defraud your petitioner in this behalf, hath not as yet delivered the said negro slaves, or any or either of them, to your petitioner, although often requested so to do. And afterwards, to wit, on the day and year first aforesaid, to wit, in said county, converted and disposed of the said several negro slaves to his own use, to the damage of your petitioner twenty thousand dollars. Wherefore your petitioner sues and prays that process may issue, requiring the said defendant to be and appear at the next superior court of said county, to answer your petitioner in an action of trover, &c.

HOLT & ALEXANDER,
*Plaintiff's attorneys.*

GEORGIA, *Muscogee county.*

Personally came before me, Josephus Echols, one of the justices of the inferior court of said county, Farish Carter, who, being duly sworn, on oath saith, that he is about to commence an action at law against Archibald T. Bennett, for the recovery of certain negro slaves, to wit, Cato, a man, about twenty-five or thirty years of age, and of the value of four hundred dollars; Elias, a man, about twenty or twenty-five years of age, and of the value of five hundred dollars; Sam, a man, about forty-five or fifty years of age, and of the value of one hundred and fifty dollars; John, a man, about twenty or twenty-five years of age, and of the value of five hundred and fifty dollars; Dinah, a woman, about twenty or twenty-five years of age, and of the value of four hundred dollars; Amarilla, child of Dinah, about six years of age, and of the value of two hundred dollars; Fanny, another child of Dinah, about four years old, and of the value of one hundred and seventy-five dollars; Emeline, another child of Dinah, about two years of age, and of the value of one hundred and fifty dollars; and another infant child of Dinah, name and sex unknown, and of the value of one hundred dollars; Jane, a woman, about twenty years of age, and of the value of five hundred dollars; and an infant child of Jane, name and sex unknown, and of the value of one hundred dollars; Nancy, a woman, about twenty years of age, and of the value of four hundred dollars;

and an infant child of Nancy, name and sex unknown, and of the value of one hundred dollars; Camilla, a girl, about twelve years of age, and of the value of three hundred and fifty dollars; Charles, a boy, about eight years of age, and of the value of three hundred dollars; and Annett, a girl, about three years of age; and of the value of one hundred and fifty dollars; the whole of said negroes, being sixteen in number, being of the aggregate value of four thousand five hundred and twenty-five dollars. And deponent further saith, that he hath reason to apprehend that said negroes have been or will be eloigned or moved away; and that they will not be forthcoming to answer the judgment, execution, or decree that shall be made in said case. And deponent further saith, that he doth verily and bona fide claim said negroes.

(Signed,) FARISH CARTER.

Sworn to and subscribed before me, this 24th day of February, 1845.

(Signed,) JOSEPHUS ECHOLS, *J. I. C.*

GEORGIA, *Muscogee county.*

FARISH CARTER
vs. } Trover and conversion.
ARCHIBALD T. BENNETT.

To the sheriff of said county, greeting.

The defendant is hereby required personally, or by attorney, to be and appear at the next superior court, to be held in and for said county, on the fourth Monday in May next, then and there to answer the said plaintiff's demand, in an action of trover and conversion, as in default thereof the court will proceed as to justice may appertain.

Witness the honorable Joseph Sturges, judge of said court, this 24th day of February, 1845. B. BEASLY, *Clerk.*

I have served the defendant personally with a copy of this writ and process, and the defendant having refused to give bond and security in terms of the law, and the property sued for not having been produced and forthcoming to be seized by me, I have, thereupon, committed him to jail, this 4th day of March, A. D. 1845.

T. A. BRENNON, *Sheriff.*

*Bench. Common law docket.*

November term, 1845, continued.
May term, 1846, verdict.

Muscogee superior court, May term, 1845, the honorable Robert B. Alexander presiding.

*Wednesday, June* 11, 1845.

FARISH CARTER
vs. } Trover and bail pendenti lite.
ARCHIBALD T. BENNETT.

No answer being filed at the present term, it is ordered that judgment be entered by default.

Muscogee superior court, May term, 1846, the honorable Robert B. Alexander presiding.

*Tuesday, May* 19, 1846.

FARISH CARTER
vs.
ARCHIBALD T. BENNETT. } Trover and bail.

*Verdict.* (*Names of jurors.*)

1. David Brown,
2. Seth Cobb,
3. William Shoffner,
4. William Hearne,
5. F. C. Johnson,
6. William Brown,
7. William Weathers,
8. Joseph Scott,
9. Henry Saunders,
10. Reuben R. Hudgins,
11. R. H. Harris,
12. Newton King.

We, the jury, find for the plaintiff the principal sum of thirty-eight hundred and fifty dollars, as the aggregate value of the negroes in said declaration, to wit, Cato, Elias, John, Sam, Dinah, and her four children, to wit, Annett, Amelia, Fanny, and Emeline; Jane and her child; Nancy and her child; Camilla, Charles, and Henry, which may be discharged by the delivery of said negroes within thirty days; and the further sum of thirteen hundred and ten dollars and thirty-eight cents, as the aggregate hire of said negroes to this date, together with the costs of this suit.

WILLIAM BROWN, *Foreman.*

May 19, 1846.

May term, 19th, 1846.

Whereupon, it is considered by the court, that the plaintiff do recover of the defendant the sum of thirty-eight hundred and fifty dollars for his principal debt, to be discharged by the delivery of the following negroes, within thirty days from this date, to wit, Cato, Elias, John, Sam, Dinah, and her four children, to wit, Annett, Amelia, Fanny, and Emeline; Jane and her child; Nancy and her child; Camilla, Charles, and Henry; and also the further sum of thirteen hundred and ten dollars and thirty-eight cents, as the aggregate hire of said negroes; and also the further sum of twenty-five dollars and sixty-seven cents, for costs laid out and expended in this behalf; and the defendant in mercy, &c.

HINES HOLT,
*Plaintiff's attorney.*

GEORGIA, *Muscogee county.*

To all and singular the sheriffs of said State, greeting:

We command you that of the goods, chattels, lands, and tenements of Archibald T. Bennett you cause to be made the sum of thirty-eight hundred and fifty dollars principal, which may be discharged by the de-

livery of the following negroes, within thirty days from the 19th day of May, 1846, to wit, Cato, Elias, John, Lane, Dinah and her four children, to wit, Annett, Amelia, Fanny, Emeline; Jane and her child; Nancy and her child; Camilla, Charles, and Henry; and also the further sum of thirteen hundred and ten dollars and thirty-eight cents, as the aggregate hire of said slaves; and also the further sum of twenty-five dollars and sixty-seven cents for costs, with interest on the principal, and the hire of said negroes from 19th May, 1846; which Farish Carter, lately in our superior court of said county, recovered against the said Archibald T. Bennett, for his principal, hire, and costs; and that you have the said several sums of money before the judge of our said court, on the second Monday in November next, to render to the plaintiff his principal, hire, and costs aforesaid; and have you there this writ.

Witness the honorable Robert B. Alexander, judge of said court, this 25th day of June, 1846.

THAD. STURGIS, *Clerk*.

GEORGIA, *Muscogee county*.

No property of the defendant to be found in this county subject to this fi. fa.

JNO. M. BETHUNE, *Sheriff*.

August 22, 1846.

GEORGIA, *Muscogee county*.

I, Thaddeus Sturgis, clerk of the superior court for said county, certify the foregoing to be a true copy of all the proceedings had in the case wherein Farish Carter is plaintiff, and Archibald T. Bennett is defendant, as appears of record, and also of papers of file now in my office.

Given under my hand and seal of office, this 24th December, 1846.

[L. S.]

THAD. STURGES, *Clerk*.

GEORGIA, *Muscogee county*.

I, Robert B. Alexander, judge of the superior court of said certify, that Thaddeus Sturgis, whose name appears to the above certificate, is clerk of the superior court of Muscogee county, and that full faith and credit ought to be had and given to his attestation as such, and that the same is in due form.

Given under my hand and official signature, this 24th December, 1846.

ROBERT B. ALEXANDER,
*Judge S. C. C. C.*

11. He next read the following affidavit of Archibald T. Bennett, the plaintiff, made as defendant, showing objections under the statute

in an action for the foreclosure of a mortgage between one Charles T. Thornton, on a certain note of $7,000, against said Bennett and Floyd.

A. T. BENNETT, impleaded with Robert J. Floyd, ads. CHARLES T. THORNTON. } Franklin superior court.

*On petition to foreclose a mortgage.*

The defendant, in pursuance of law, files herewith the following objections to the decree of foreclosure, herein protesting, in the first place, that the plaintiff is not entitled to the same, for objections apparent in the said proceedings, for which the same should be dismissed. The defendant sets forth that the note of $7,000, which said mortgage was given to secure, was made and executed in consideration and payment of certain negro slaves sold to defendants on the 16th day of March, in the year 1842, the same being specially set forth in a bill of sale executed by one Reuben Thornton to defendants. That said slaves being the property of one Warren Jordan, in the State of Georgia, were fraudulently, clandestinely, covinously, collusively, wickedly, illegally, and improperly, against the laws of said State, run off, removed, and carried away from said State, by said Jordan and said Reuben Thornton, said removal being made, executed, contrived, and devised of fraud, covin, collusion, and guile, to convey them from said State, out of and beyond the United States, to Texas, to the end, purpose, and intent to convert them to their own use and profit, and to delay, hinder, and defraud the Georgia Railroad and Banking Company, and others to whom said slaves had been mortgaged, and other creditors in the said State of Georgia, contrary to the laws of said State; that the sale to said defendants by the said Thornton, and the giving and taking of the said note of $7,000, and its assignment to plaintiff, was in pursuance and consummation of the same wicked, fraudulent, corrupt, illegal, covinous, and improper design, contrivance, and purpose, and the assignment of said note to said plaintiff was under suspicious circumstances, not in the usual course of trade, without consideration, and fraudulent. That said negroes being over the age of twelve years, were imported into this Territory by said Jordan, on the day of March, 1842, from said State of Georgia, without any design of making a settlement in this Territory, and without having obtained a certificate, signed by a judge of the county court, or two justices of the peace of the county from which they were brought, containing a particular description of the stature and complexion of said slaves, together with their names, ages, sex; and, furthermore, that they have not been guilty of, or committed, murder, burglary, arson, or other felony within such State, as required by the law of the Territory, and in defiance thereof; and further, that said slaves having been brought into this Territory as merchandise, were sold to defendants by said Thornton, on the day of March, 1842, at Appalachicola, in the Territory of Florida,

when they were first sold in this Territory, without causing to be registered with the clerk of the county court of Franklin county, the certificate required by law as aforesaid, containing a particular description of said slaves as aforesaid; that they were not guilty of, and had not committed, murder, and the other crimes aforesaid in said State; that said slaves were sold to defendants by said Jordan, and said Jordan, without having obtained the certificate of description required by said statute, and without complying with the law of this Territory, entitled an act relating to crimes and misdemeanors committed by slaves, free negroes, and mulattoes; and defendant saith that, on account of the defences and causes herein set forth, as well as in the action at law on the said note, to which he refers and makes a part of his objections herein, he ought not to be compelled to pay said note and mortgage, the same being on account thereof, and the reasons and causes herein set forth null and void.

THOMAS BALTZELL,
*For defendant, Bennett.*

TERRITORY OF FLORIDA,
*Jackson county.*

Before me personally appeared A. T. Bennett, defendant in the above suit, who being duly sworn saith, that the matters above stated, so far as they are inserted from his own knowledge and belief, are true; and so far as made from the knowledge of others, he believes them to be true. A. T. BENNETT.

Sworn and subscribed before me, 24th July, 1844.
R. BALLARD, *J. P.*

He also read in connexion with the same, the following two bundles of pleas filed by said Bennett (and referred to in the latter part of said affidavit) in a certain action at common law, brought against him on said note by said Thornton.

CHARLES T. THORNTON
vs.
A. T. BENNETT and R. J. FLOYD. } Assumpsit.

Franklin superior court.

1st bund. pleas.

And said defendants by their attorneys come and defend the wrongs and injuries, when, &c., and for plea to plaintiff's declaration in said cause filed say, that they did not undertake and promise in manner and form as said plaintiff hath declared against them, and of this they put themselves upon the country, &c.

And for further plea the defendants say, actio non, because they say that the consideration for which the note declared was given has failed, of which said plaintiff, before and at the time of the transfer of the same to him had notice, and of this are ready to verify. Wherefore they pray judgment, &c.

And for further plea these defendants say, actio non, because they say that the consideration for which said note was given was a number of negro slaves, to wit, old Tom, Dick, Allen, Cato, Jack, Abram, Charles, Gilbert, Amos, Merida, Elias, Major, Ben, Sam, Jeffrey, Rica, Moses, Americus, Albert, Billy, Isaac, John, Coon, Joe, Grandison, Fayette, Andrew, Virgil, Washington, Tom, Marcus, Clem, William, Monroe, Wiley, Charles, Simon, Sarah, Martha, Patsey, Jane, Susan, Narcissa, Jinsey, Dinah, Harriet, Fardy, Mariah, Milley, Rachel, Penny, Sally, Nancy, Charlotte, Caroline, Antoinette, Camilla, Francis, Louisa, Lucinda, Ellen, Sarah, Amanda, Fanny, Avarilla, Mary, Crissa, Abbey, Clarissa, Ireny, Jincy, William, Henny, Haimy, Elbert, Cornelius, Randall, Henry, Camilla, imported from the State of Georgia into the Territory of Florida, contrary to the provisions of the third section of an act of the legislative council of the Territory of Florida, relating to crimes and misdemeanors committed by slaves, free negroes, and mulattoes, approved November twenty-first, eighteen hundred and twenty-eight, of which said plaintiff, before and at the time of the transfer of said note to him, had notice, and of this these defendants are ready to verify. Wherefore they pray judgment, &c.

And for further plea these defendants say, actio non, because they say that the consideration of said note was a certain number of negro slaves, whose names are mentioned in defendant's third plea, sold in the city of Appalachicola, in said Territory, by one Reuben Thornton to these defendants, on the sixteenth day of March, in the year eighteen hundred and forty-two, contrary to the provisions of the fourth section of said act, of which the said plaintiff, before and at the time of the transfer of said note to him, had notice, and of this they are ready to verify. Wherefore they pray judgment, &c.

And for further plea these defendants say, actio non, because they say that the consideration of said note was a certain number of negro slaves, to wit, the slaves whose names are mentioned in defendant's third plea, imported into the said Territory from the county of Baker, in said State of Georgia, without the importer thereof having previously obtained a certificate signed by the judge of the county court of said county of Baker, or any two justices of the peace in said county of Baker, in said State, containing a particular description of the stature and complexion of said slaves, together with the ages and sexes of the same, and that said slaves had not been guilty of or committed murder, burglary, arson, or other felony, within their knowledge or belief, in said State, the said slaves being over the age of twelve years, the said importer not desiring to make a settlement in said Territory; of all of which said plaintiff, before and at the time said note was transferred to him, had notice; and of this said defendants are ready to verify. Wherefore they pray judgment, &c.

And for further plea these defendants say, actio non, because they say, that the consideration for which said notes were given was a certain number of negro slaves whose names are mentioned in defendants' said third plea, first sold to the defendants in the said city, by said Reuben

Thornton, on the said sixteenth day of March, 1842, after being imported into said Territory as aforesaid; which said negro slaves were brought into said Territory as merchandise, without the said Reuben having caused to be registered with the clerk of the county court of Franklin county, in said Territory, (said county of Franklin being the place where said slaves were first sold after being imported as aforesaid,) the certificate as aforesaid, agreeable to the provisions of said act, of which said plaintiff, before and at the time of the transfer of said note to him, had notice; and this said defendants are ready to verify. Wherefore they pray judgment, &c.

And for further plea these defendants say, actio non, because they say, that on the said sixteenth day of March, 1842, the said Reuben Thornton, representing himself as the sole and bona fide owner of said negro slaves, sold the same in the said county of Franklin to these defendants for the sum of fourteen thousand dollars, these defendants paying to the said Reuben Thornton the sum of seven thousand dollars, or some other large sum, in cash, and executing and delivering to the said Reuben said note, with the endorsement of James F. Farrior, as the balance of said purchase money, he the said Reuben executing and delivering, on the same day and year last aforesaid, to these defendants, his bill of sale for said negro slaves, wherein and whereby he expressly covenants to warrant and defend the title to the same against the claims of himself and of all and every person or persons whatsoever. That said negro slaves were obtained by said Reuben from Warren Jordan of the State of Georgia, and were secretly, clandestinely, fraudulently, and in violation of law, run from said State, and imported into this Territory as aforesaid, to defraud the creditors of the said Jordan and the said Thornton, collusively, to prevent the recovery of their just debts and demands, and to appropriate the proceeds of the sale of said slaves to their own use and benefit, fraudulently and improperly; and that said sale from said Jordan to said Thornton, and said sale from said Thornton to these defendants, was for this fraudulent and illegal purpose; and the pretended transfer of said note to the present plaintiff, the brother of the said Reuben, is in pursuance of the same illegal and fraudulent purpose and design; he the said plaintiff having given no consideration whatever for said note, and now pretending to hold said note as a trustee for said Reuben's children, and otherwise being a party to and participant in the fraudulent and corrupt designs of said Reuben, aiding and assisting and abetting, by the use of his name, in such design and purpose; and the said Reuben, after having received from these defendants the said sum of money as aforesaid, and their said note, and after having warranted said slaves as aforesaid, unlawfully, corruptly, and iniquitously, conspired illegally and improperly to deprive these defendants of the possession, control, and ownership of said negroes, and fraudulently and falsely representing himself as the attorney of said Warren Jordan, corruptly and iniquitously gave his consent to and aided one Farish Carter in obtaining in the superior court of said county a judg-

ment of foreclosure against the said Jordan, under and by virtue of which said judgment the greater part of said negroes were improperly and illegally taken, sold, and disposed of, and the possession of the said defendants in said negroes wrongfully and illegally disturbed, the said Reuben being present, aiding and assisting in such illegal taking, seizure, sale, and disposition; when in truth and in fact the said Reuben had no authority from the said Jordan for consenting to such judgment, as the attorney of said Jordan. And the said Reuben, in all and other ways and means, by advice, direction, collusion, and fraudulent contrivance, aided, assisted, and directed the taking and depriving these defendants of the possession and ownership of said negroes; that the said negroes were imported into this Territory as aforesaid, by said Reuben and Warren Jordan, with no design of making a settlement therein; the men before named and sixteen women, and a part of the others, being above the age of twelve years, without having obtained the certificate as aforesaid, as required by law; of all of which said plaintiff, before and at the time of the transfer of said note, had notice, and of this these defendants are ready to verify. Wherefore they pray judgment, &c.

And for further plea said defendant Bennett comes and defends, &c., when, &c., and says, actio non, because he says that the several promises in said declaration mentioned, if any such were made, were and each of them made by him, the said Bennett, with Robert J. Floyd, jointly, and not by the said Bennett alone, and that after the execution of said note, and since the commencement of this suit, the said plaintiff, by his said agent, Reuben Thornton, released, and fully discharged in writing, the said Floyd from all liability on said note, and on the joint mortgage of defendants, given to secure the same, and of this said defendant, Bennett, is ready to verify. Wherefore he prays judgment, &c.

SEMMES & BALTZELL,
*Attorneys for defendants.*

*Second bundle pleas.*

ROBERT J. FLOYD, impleaded with A. T. Bennett, ads.
CHARLES T. THORNTON.

And the said defendant comes and defends the wrong and injury, when, &c., and says the plaintiff actio non, because he says that after the making of the promises set forth in plaintiff's declaration, to wit, on the said plaintiff, by his certain writing of release, then and there made, sealed and delivered to the said defendant, who is still in possession of the same, for the consideration therein mentioned, did release said Floyd from the said several promises in said declaration set forth, and expressly from the note of seven thousand dollars above declared upon, as by said deed or writing of release will fully appear; this he is ready to verify, &c.

A. G. SEMMES,
*For defendant, Floyd.*

A. T. BENNETT, impleaded with Robert J. Floyd, } ads.
CHARLES T. THORNTON. }

2. And the said defendant comes and defends, &c., and says, actio non, because he says that the said several promises in said declaration mentioned were, and each of them was, made by him, the said defendant, and Robert J. Floyd, jointly, and not by the said A. T. Bennett solely; and that after the making of such promises, to wit, on the day of , at the county aforesaid, the said plaintiff, by his certain writing of release, then and there made, sealed, and delivered, by his attorney in fact, one George S. Hawkins, to the said Floyd, who is still in possession of the same, for the consideration therein mentioned, did release said Floyd from the said several promises in said declaration mentioned, and discharged and released him from the said note of seven thousand dollars above declared upon, as by said deed or writing of release will fully appear, and this the said Bennett is ready to verify. Wherefore he prays judgment, &c.

3. And for further plea in this behalf said defendant says, actio non, because he says that the promissory note declared upon, and the promises in said declaration mentioned, were, and each of them was, made by him, the said Bennett, without any consideration, either good, legal, or valid in law, and that there is and was entire want of consideration for the same, and the promises set forth in said declaration, and that said note was assigned and transferred fraudulently, without consideration, and not in the usual course of business, to said plaintiff, and this he is ready to verify. Wherefore, &c.

4th. And for further plea in this behalf said defendant says, actio non, because he says that the consideration for which said note was given, and the promises aforesaid made, has entirely failed, and that the said note was assigned to said plaintiff fraudulently and illegally, under suspicious circumstances, and not in the usual course of trade, and so by him received; and this he is ready to verify, &c.

5th. And for further plea in this behalf said defendant says, actio non, because he says that said note, and the several promises in plaintiff's declaration mentioned, were made and given as consideration for the bargain and sale by one Reuben Thornton to him, said defendant, and said Robert J. Floyd, on the 16th of March, 1842, of the following negro slaves, to wit: Old Tom, Dick, Allen, Cato, Charles, Gilbert, Amos, Merida, Elias, Jack, Abram, Major, Ben, Sam, Jeffrey, Rica, Moses, Americus, Albert, Billy, Isaac, John, Coon, Joe, Grandison, Fayette, Andrew, Virgil, Washington, Tom, Marcus, Clem, William, Monroe, Wylie, Charles, Simon, Sarah, Martha, Patsey, Jane, Susan, Narcissa, Jinsey, Dinah, Harriet, Fardy, Mariah, Milly, Rachael, Penny, Sally, and Nancy, Charlotte, Caroline, Antoinette, Camilla, Frances, Louisa, Lucinda, Ellen, Sarah, Amanda, Fanny, Avarilla, Crisa, Aly, Clarissa, and Anena, Jerry, William Henry, Henry, Elbert, Cornelius, Randal, Henry, and Emeline, eight last infants, which will more fully appear by the bill of sale executed by said Thornton to this defendant and said Floyd on the date

aforesaid, which said negroes were sold to said defendant and said Floyd for the sum of fourteen thousand dollars, (said note of $7,000 being part thereof;) and the said defendants in fact saith, said Thornton was not the owner of said negroes, and had not the right or title thereto, but falsely and fraudulently warranted the same to said defendant and said Floyd, said Thornton well knowing at the time that his warranty was of no value, he being insolvent, deeply in debt, and embarrassed, and involved beyond his means of payment; and that the note of $7,000 aforesaid was fraudulently assigned and transferred to avoid the said warranty, and to deprive defendant of his defence at law to said note, and was not taken or obtained by said plaintiff in a course of trade, for a good and valuable consideration, and bona fide. And defendant further showeth, that said negro slaves have been recovered from him by due course of law, by older and better right and title. Wherefore he saith, that said note is wholly void, and this he is ready to verify. Wherefore he prays judgment, &c.

6th. And for further plea said defendant says, actio non, because he says that said negroes were sold to said defendant and said Floyd as aforesaid, for the consideration aforesaid; said defendant, in fact, saith, that on the —— day of ——, one Farish Carter, as assignee of the Georgia Railroad and Banking Company, to whom a mortgage of said slaves had been made in the State of Georgia, on the 30th day of October, 1839, on the —— day of ——, obtained a decree of foreclosure against Warren Jordan, through whom said Thornton procured his title, and by the order and decree of the superior court of Franklin county, in which application was made, therefore the equity of redemption of said Jordan, and all others claiming by, through, or under him, was barred and foreclosed, and said slaves were ordered to be sold to pay the sum of $———, as by reference to the record of said court will fully appear. By virtue of said decree the said slaves were sold at public sale, under execution by the marshal of the Appalachicola district, and were and are wholly lost to said defendants; and said defendant saith, that said sale and decree were procured through the contrivance of said Reuben Thornton and said Charles T. Thornton, and that the transfer of said note of said defendant and said Floyd to said plaintiff were to avoid the warranty of said Reuben Thornton, not in the usual course of trade, without consideration, and fraudulent, and the note itself void, and this he is ready to verify.

7th. And for further plea in this behalf said defendant says, actio non, because he says that, in consideration of the sum of fourteen thousand dollars, (seven thousand being paid in hand and the note aforesaid for the residue,) the said Reuben Thornton then and there sold the said slaves, and warranted them to the said defendant and said Floyd by his bill of sale under his hand and seal of the date aforesaid; and said defendant in fact saith, that the Georgia Railroad and Banking Company having and holding a note of $———, secured by mortgage on said negroes, instituted suit for foreclosure thereof, in the superior court for the county of Franklin, in this territory, and by the decree, and under thereof, obtained a decree of foreclosure for the

1921.

benefit of Farish Carter, assignee on the said mortgage, and an order for their sale, and to bar the equity of redemption of all persons claiming or to claim under said Jordan, by virtue where of said negroes were sold by the marshal to satisfy said decree, and the same were wholly lost to said defendant; all of which will appear by reference to the record and proceedings in said case. And said defendant saith, that said Reuben Thornton and said plaintiff were aiding the said Carter and said company to deprive said defendant of the negroes aforesaid, and that said note of $7,000 aforesaid was signed by said Reuben to avoid his warranty and to defraud defendant, and was obtained and received by said plaintiff without consideration, not in the usual course of trade, but fraudulently. Wherefore he saith, that the same and the said note is void; and this he is ready to verify, &c.

8th. And for further plea in this behalf defendant says, actio non, because he says that said Warren Jordan being greatly embarrassed and in debt in the State of Georgia, as well to others as to the Georgia Railroad and Banking Company, to whom he had mortgaged the negroes aforesaid to pay the debt aforesaid, and said Reuben Thornton being also in debt, embarrassed, and involved, a conspiracy and combination were formed between them to defraud these said creditors by running off the slaves aforesaid, and the same were started for Texas, but removed and carried to Florida, and sold as aforesaid to defendant and said Floyd; in pursuance of which corrupt, unlawful, and fraudulent purpose, said negroes having been fraudulently conveyed to said Thornton, and the note of $7,000 sued on having been taken by him in pursuance of such fraudulent, corrupt, and iniquitous design; that, after such sale, the mortgagee of said Jordan, to wit, said company, instituted their suit in this honorable court, and obtained a decree foreclosing his equity of redemption, and that of all claiming under him, by virtue of which said negroes were sold under process of said court by the marshal thereof, so that said negroes were wholly lost to defendant. Wherefore said defendant saith, that said removal of said negroes there transferred to said Thornton, the making of said note and its assignment by said plaintiff, were fraudulent, covinous, against the laws of Georgia and Florida, and the said note, in consequence thereof, void; and this he is ready to verify. Wherefore, &c.

9th. And for further plea in this behalf said defendant says, that said note and said promises were made in consideration and payment for the negroes aforesaid, sold as aforesaid to defendant and said Floyd, on the 16th day of March, 1842, by said Reuben Thornton; that the said slaves, with the exception of Jerry, William, Henry, Elbert, Cornelius, Randall, Henny, Emeline, named in said bill of sale as infants, were over the age of twelve years, and were imported into this territory from the county of Hall, in the State of Georgia, by said Thornton, without any desire of making a settlement in this territory, without having personally obtained a certificate signed by the judge of the county court of said county, or any two justices of the peace thereof, containing a particu-

lar description of the stature and complexion of said slaves, together with the name, age, &c., of the same; and furthermore, that said slaves have not been guilty of, or committed murder, burglary, arson, or other felony, within his knowledge in such State, as required by law, but in defiance and disregard thereof. And said defendant further saith, that said note sued on was assigned and transferred to said plaintiff without consideration, and obtained by him fraudulently, illegally, improperly, and covinously, and not in the usual course of trade; wherefore he saith said note is void. And this he is ready to verify, &c. Wherefore, &c.

10th. And for further plea defendant says, actio non, because he says that said Reuben Thornton, on the 16th day of March, 1842, sold to defendant and one Robert J. Floyd the negroes aforesaid, being, (with the exception of those enumerated above as infants,) over the age of twelve years, without having complied with the law of this Territory, which provides that it shall not be lawful for any person or persons, except it be such persons as are removing to this Territory for the purpose of making a settlement therein, to import into this Territory from any of the United States any slaves, either negroes or mulattoes, without having previously obtained a certificate signed by the judge of the county court, or any two justices of the peace in the county of the State from which such slaves are brought; which certificate shall contain a particular description of the stature and complexion of such slave or slaves, together with the name, age, or sex of the same; and furthermore, that the slave or slaves therein mentioned and described have not been guilty of, or committed murder, burglary, arson, or other felony, within the knowledge or belief, in such State; and defendant saith that said negroes, with the exception aforesaid, were above the age of twelve years, and were imported into this Territory on the day of April, in the year 1842, by said Thornton, without any design on his part to make a settlement therein, from the State of Georgia, without producing the certificate required by said law, and contrary to the form of the statute in such cases made and provided, and in fraud and disregard thereof. And defendant saith, that said note was given in payment of said negroes, and fraudulently assigned and transferred to said plaintiff without any consideration, and therefore said defendant saith said note is wholly and entirely void; and this he is ready to verify, &c.

11th. And for further plea in this behalf said defendant says, actio non, because he says that the negroes aforesaid, bought as aforesaid by said Floyd and this defendant, from said Thornton at Appalachicola, Florida, on the 16th day of March, 1842, were imported into this Territory on the first of March, in said year, from the State of Georgia, without any intention of the person importing them to make a settlement therein, and that the same all were (with the exception aforesaid) above the age of twelve years, and were sold to this defendant and said Floyd by said Thornton without having caused to be registered according to law in Franklin county, Florida, where they were first sold, with the clerk of said county of Franklin, the certificate furnished by law as

aforesaid, signed by the judge of the county court, or two justices of the peace within the county of the State from which such slaves were brought, giving a particular description of their stature, &c., as above set forth and required by law, but that the same was [im]properly omitted and avoided, contrary to the form of the statute in such cases made and provided, and said transfer was made in fraud of the law. And said defendant further saith, that said note was unlawfully, corruptly, and improperly, without any consideration, sold, assigned, and transferred to said plaintiff. Wherefore he saith, that said note and assignment are against law, and therefore void; and this he is ready to verify. Wherefore, &c. SEMMES & BALTZELL,

*For defendant.*

12th. And for further plea in this behalf said defendant says, that one Warren Jordan, of the State of Georgia, being greatly embarrassed, insolvent, and in debt, and having mortgaged various slaves, old Tom, Dick, and others particularly enumerated aforesaid, and especially in the bill of sale of said Thornton to defendants, herein before referred to, to the Georgia Railroad and Banking Company, by deed dated the 30th of October, 1839, to secure payment of the sum of past due, and designing and contriving the means of avoiding payment thereof, and of his other debts, and to defeat the lien and mortgage of said company, and with said intent and purpose of delaying, hindering, and defrauding said company, and his other creditors in the State of Georgia, fraudulently, illegally, and improperly, collusively and covinously, conspired and combined with one Reuben Thornton to run off said negroes out of said State, and to a foreign country, and to sell and dispose of them to the injury and prejudice, and loss, of said creditors and mortgagees, and to convert them to the use, profit, and advantage of said Jordan and Thornton, contrary to the laws of said State and of this Territory; that said negroes, in pursuance of said conspiracy, in the course of their transportation to Texas, and in consummation of the fraudulent, iniquitous, collusive, corrupt, and illegal designs aforesaid, were sold by said Thornton to said defendant and said Robert J. Floyd, and in further consummation of the wicked, fraudulent, illegal, corrupt, and covinous design, purpose, and contrivance aforesaid, the note of seven thousand dollars, and the other promises set forth in plaintiff's declaration, were given and taken in consideration and payment thereof. Said defendant further saith, that the transfer and assignment of said note to said plaintiff was not in the usual course of trade or business, but in consummation of the same fraudulent, wicked, collusive, and covinous purpose and design, and without any consideration whatever, and with full knowledge on the part of said plaintiff of such contrivance and design. Wherefore, he says, said note and other promises are void, and this he is ready to verify. Wherefore he prays judgment, &c.

SEMMES AND BALTZELL,

*For defendant.*

BENNETT ads. FLOYD.

13th. And defendant further says, that the note aforesaid was given by defendants in consideration of the sale of the negroes aforesaid to them on the day of March, 1842, at Appalachicola; that said negroes having been imported into this Territory on the 1st day of March, 1842, from the State of Georgia, were sold by said Warren Jordan and said Thornton to said defendants without having previously obtained a certificate signed by the judge of the county court, or any two justices of the peace, in the county of the State from which they were brought, containing a particular description of the stature and complexion of each slave, together with the name, age, and sex of the same; and, furthermore, that they have not been guilty of or committed murder, burglary, arson, or other felony, within their knowledge, in such State, and that the said negroes were over the age of twelve years, and herein before described, and were warranted, and were sold on the day of , at Appalachicola aforesaid; and defendants in fact saith, that the said note was assigned to plaintiff as aforesaid without consideration, fraudulently and collusively, not in a course of trade, therefore is null and void; and this he is ready [to verify.] Wherefore he prays judgment, &c.

SEMMES AND BALTZELL,
*For defendant.*

BENNETT, &c., ads. THORNTON.

The defendant, in addition to his pleas filed as aforesaid, gives notice that he will, under the rules of the court in such cases provided, rely on the following facts in defence:

That the note of $7,000 sued upon by plaintiff was given in consideration and payment of certain negro slaves sold to defendant and Robert J. Floyd on the day of April, in the year 1842, above specified and set forth; that said slaves being the property of one Warren Jordan, of the State of Georgia, were fraudulently, clandestinely, covinously, collusively, wickedly, illegally, and improperly, against the laws of said State, run off, removed, and carried away from said State by said Jordan and one Reuben Thornton, said removal being made, executed, contrived, and devised of fraud, covin, collusion, and guile, to convey them from said State, out of and beyond the United States, to Texas, to the purpose and intent to convert them to their own use and profit, and to delay, hinder, and defraud the Georgia Railroad and Banking Company, and others to whom said slaves had been mortgaged, and other creditors of said Jordan in the State of Georgia. That the sale to said defendants by the said Thornton, and the giving and taking of said note of $7,000, and its assignments to plaintiff, were in pursuance and consummation of the same wicked, fraudulent, cor-

rupt, illegal, covinous, and improper design, contrivance, and purpose, and the assignment of said note to plaintiff was under suspicious circumstances, not in the course of trade, without consideration, and fraudulent. That said negroes, being over the age of twelve years, were imported into this Territory by said Jordan on the day of April, 1842, from said State of Georgia, without any design of making a settlement in this Territory, and without having obtained a certificate, signed by a judge of the county court, or two justices of the peace of the county from which they were brought, containing a particular description of the stature and complexion of said slaves, together with their name, age, and sex; and, furthermore, that they have not been guilty of or committed murder, burglary, arson, or other felony, within their knowledge or belief, within such State, as required by the law of this Territory, and in defiance thereof; and, further, that said slaves having been brought into this Territory as merchandise, were sold to defendants by said Thornton on the day of April, 1842, at Appalachicola, in the Territory of Florida, where they were first sold in this Territory, without causing to be registered with the clerk of the county court of Franklin county the certificate required by law as aforesaid, containing a particular description of said slaves as aforesaid, and that they were not guilty of and had not committed murder and the other crimes aforesaid in said State. Said defendant saith that said note is void.

THOMAS BALTZELL,
*For defendant.*

12th.

He next read the following deposition of Felix H. G. Long:

STATE OF FLORIDA, *Franklin county.*

Interrogatories to be propounded to Richard H. Long and Felix H. G. Long, material winesses for defendant, residing beyond the limits of the said State of Florida.

Interrogatory 1st. Do you know the parties?

Interrogatory 2d. Were you present at two different sales of negroes by the marshal of the Appalachicola district of Florida—the one sale on the 31st day of December, 1842, and the other on the 9th day of January, 1843? If yea, state as whose property, and under what circumstances, they were sold, who became the purchaser, and into whose possession did they go after the sale. This interrogatory to be addressed to Richard H. Long; also the next.

Interrogatory 3d. If the defendant, or you as his agent, purchased any of said negroes, please state the names, description, age, and value of such of them, and the value of their hire per annum, from the time the same went out of your possession until the present time.

Interrogatory 4th. To both witnesses. Please state if said negroes, or any of them, went into the possession of the plaintiff. If yea,

when and how. Relate fully and particularly all the circumstances under which plaintiffs took possession of said negroes; what disposition has he since made of them? State the names, ages, value, and description of each of the negroes which were purchased by the defendant, or by you as his agent, and which subsequently went into the possession of plaintiff.

Interrogatory 5th. State all that you, or each of you, know that will benefit the defendant in this suit, as if particularly interrogated thereto.

R. J. MOSES,
CARAWAY SMITH,
*Attorneys for defendant.*

*Cross interrogatories.*

First. For Richard H. Long. Please state whether you did or not purchase said negroes at said sales in your own name, and were they not delivered to you by the marshal.

Second. For Richard H. Long. Did you or not execute and deliver to said defendant, after said sales, a mortgage on said negroes so purchased as aforesaid; if yea, was it ever recorded in Jackson county, where you reside? And state whether you ever gave any other mortgage to said defendant on said negroes, and which has been recorded in Jackson county.

Third. For Richard H. Long. Were you or not present in Appalachicola when defendant, Carter, was tried before the superior court for Franklin county, on account of taking a portion of these negroes from Florida; if yea, did you or not attend as a witness at said trial, and did you or not give your testimony on said trial; if yea, did you or not state on said trial that defendant, Carter, had no interest whatever in said slaves; that, at said sales, said slaves were purchased by you in your own right, and that there was no understanding between you and Carter as to said purchase? State fully and particularly in regard to this matter.

Fourth. For Richard H. Long. If you answer to direct interrogatory that plaintiff got some of these negroes from your possession, then state whether you did not have a suit or suits in trover instituted against plaintiff for these identical negroes, and is or not said suit or suits now pending.

Fifth. For Richard H. Long. Do you or not know of defendant, Carter, instituting a suit in trover against plaintiff in Columbus, Georgia, for the said negro slaves, said to have been taken by Bennett from your possession in Jackson county? If they were not the same negroes, then state what negroes they were; their description, ages, &c. State whether your testimony in said case was not taken by interrogatories; and if so, state fully and particularly what your answers were to said interrogatories.

Sixth. For Richard H. Long. State whether you did not repeatedly

state in Appalachicola, subsequent to said sales, that you had bought the said negroes on your own account, and in your own right, and for your own benefit, and that Carter was in no way concerned or interested in said purchase; upon this point state fully.

Seventh. For each witness. State all you know that will benefit plaintiff.

Eighth. State whether each of you are not very unfriendly to plaintiff.

A. G. SEMMES,
W. G. M. DAVIS,
*Attorneys for plaintiff.*

To the first direct interrogatory, Felix H. G. Long answering says: He is acquainted with the parties.

To the fourth direct interrogatory this witness answering says: The negroes mentioned in the answer of Richard H. Long to the third direct interrogatory went into the possession of the plaintiff. The negroes were taken by the plaintiff, with a body of armed men, from the plantation of Richard H. Long, in Jackson county, as nearly as he recollects, on the night of the 17th April, 1843. I did not know the plaintiff; but upon being asked who it was, he replied that his name was A. T. Bennett, from Appalachicola, and that he had come for the negroes. I do not know what disposition he has since made of the negroes.

5th direct interrogatory. This witness answering says: That he knows nothing further than he has already stated.

*Cross interrogatories.*

To 7th cross interrogatory. This witness answering says, that he knows nothing that will benefit the plaintiff.

To 8th cross interrogatory. This witness answering says, that he is indifferent to the plaintiff.

FELIX H. G. LONG.

Sworn to and subscribed before us, this 6th day of February, A. D. 1849.

J. J. FINLEY, [SEAL.]
RICHARD L. CAMPBELL, [SEAL.]
*Commissioners.*

13th. He next read the following deposition of John R. Felton.

A. T. BENNETT action FARISH CARTER. } Trespass, &c.

*Interrogatories to be propounded to John R. Felton, a material witness for defendant in above cause.*

First. Do you know the parties?

Second. Were you present at a sale of negroes at Appalachicola, un-

der a judgment in favor of Farish Carter vs. Warren Jordan, on the thirty-first day of December, 1842, and ninth day of January, 1843?

Thirdly. State the names of the negroes sold, to whom they originally belonged, and your means of knowledge.

Fourthly. State the names of the negroes you saw in the possession of the marshal of the Appalachicola district; whether they were the property of Warren Jordan; and whether they were the same you saw sold at the sale aforesaid.

Fifth. State whether you saw the negroes aforesaid, or what negroes, delivered by said marshal to Col. R. H. Long, at his plantation in Jackson county, and whether these negroes were originally the property of Warren Jordan. And state all you know that will benefit said Farish Carter.

GEORGE S. HAWKINS,
*Attorney for Carter.*

*Cross interrogatories to John R. Felton.*

First. If you answer the second interrogatory in the affirmative, state for what purpose did you come to Appalachicola, and who employed or induced you to come. State fully and particularly.

Second. What is your occupation; in whose employ were you when you came to Appalachicola?

Third. If you answer the third direct interrogatory by stating the names, state do you give the names from recollection only, or from any memorandum you made at the sale, or are the names furnished you by any one. If yea, who by, and in what way; have you had any conversation recently with Reuben Thornton in regard to these negroes, or in regard to the answers you should make to these interrogatories; have you had any communication or conversation with him in regard to this matter?

Fourth. Do you know what interest Reuben Thornton, or any of his family has in the suits brought by Carter against Bennett and others for the recovery of these negroes? State particularly.

Fourth. Were you not one of the party who run a part of these negroes from Richard H. Long's plantation, in Florida, to the State of Georgia, while they were in litigation?

Fifth. Do you know when any of these negroes were first sent from Georgia to Appalachicola in 1842; if yea, for what purpose were they sent to Florida? State fully and particularly. Did you come with said negroes, or any part of them, to Appalachicola in 1842; if nay, where were you, and were you ignorant of their being run from Georgia?

Sixth. Did you furnish to the marshal the names and description of the negroes sold, as referred to in direct interrogatories, or did you assist in doing so? State fully and particularly your agency in relation to this matter.

A. G. SEMMES,
*Plaintiff's attorney.*

1925.

ARCHIBALD T. BENNETT
vs.
FARISH CARTER. } Trespass, &c.

Franklin superior court, Florida.

STATE OF GEORGIA,
*Macon county.*

By virtue of a commission from the honorable the superior court of the county of Franklin, Florida, to us directed, we have caused John R. Felton, the witness in said commission named, to come before us, and after being duly sworn true answers to make to certain interrogatories annexed, deposeth and answers as follows:

1st interrogatory. He answers and says, he is acquainted with Carter, but has no personal acquaintance with Bennett.

2d interrogatory. He answers and says, he was present at both, December, 1842, and January, 1843.

3d interrogatory. He answers and says, the names of the negroes sold in December, 1842, were as follows: Rica, Tom, Charles, Pink, Charles, Henry, Pink's two children; Elias, Dinah, Antoinette, Emeline, Sam, old Tom, and old Sarah, Camilla, Clarissa, Ellen, Nancy, and child by the name of Enoch; Avarilla, and Fanny. And in January, 1843, were sold as follows, viz., Jeff, Isaac, Allen, Cato, John, Irena, Joe, Amos, Patsey, and child by the name of Henry; I believe Sally, Andrew, Albert, Jane and child. The above negroes, at the time of sale, belonged to Warren Jordan. The aforesaid negroes are the very identical negroes that he took from Warren Jordan's plantation, in Baker county, and delivered to Jeptha C. Harris, of Albany, in Baker county, on the boat called James Y. Smith, by Warren Jordan's request; and further says, that he superintended Warren Jordan's plantation in the year 1841, and commenced for the year 1842.

4th interrogatory. He answers and says, the names of the negroes that he saw in possession of the marshal of Appalachicola district are in the 3d interrogatory, and they were the same negroes that were in possession of Warren Jordan when he took charge of the said Jordan's plantation in 1841, and they were the same that were sold in aforesaid sale.

5th interrogatory. He answers and says, that he saw the marshal deliver the named negroes in the third interrogatory to Col. R. H. Long, at his plantation in Jackson county, Florida, and the negroes were originally Warren Jordan's, and belonged to said Jordan for a number of years previous to said sale.

*Cross interrogatories.*

1st cross interrogatory. He answers and says, that from the request of the defendant, he went to testify to the negroes that could be found belonging to Warren Jordan, and that he never was hired to go.

2d cross interrogatory. He answers and says, that he was in no per-

son's employ, and his occupation was attending to his own money matters.

3d cross interrogatory. He answers and says, that he made no memorandum at the sale, and there were no names furnished him with the interrogatories or by letter, and that he has had no conversation with Reuben Thornton or correspondence about these negroes recently.

4th cross interrogatory. He answers and says, he knows not, and that he was not one of the parties that run the negroes from R. H. Long's plantation to Georgia.

5th cross interrogatory. He answers and says, he has answered that question in third direct interrogatory. They were moved from the plantation in March, 1842, and what they were sent for he says he does not know.

6th cross interrogatory. He answers and says, he did not furnish the marshal with the names of the negroes, nor assist in doing so, and that he had no agency in the matter.

JOHN R. FELTON.

Sworn to and subscribed before us this 8th April, 1844.

WM. M. S. HOUGHTON, [SEAL.]
GEORGE KNOWLES, [SEAL.]
*Commissioners.*

He next read the following notice in the handwriting of Thomas Baltzell, then Bennett's attorney, of his motion to open the decree in the case of foreclosure vs. Jordan, above inserted, which notice is of file in said cause, but was omitted in the copy of the record read:

GEORGIA RAILROAD AND BANKING COMPANY
vs.
WARREN JORDAN.

Notice of an application on the part of Archibald T. Bennett, to set aside the decree rendered in this case, returnable to-morrow morning, and leave to take the papers from the office.

And also the following appeal bond and proceedings in the matter of the rule vs. Hez. Hawley, marshal, in the same case, also omitted in said copy of the record:

Know all men by these presents, that we, Archibald T. Bennett, , are held and firmly bound unto Farish Carter, assignee of the Georgia Railroad and Banking Company, in the just and full sum of one hundred dollars, the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, and firmly by these presents. Witness our hands and seals this 21st day of December, A. D. 1842.

The condition of the above obligation is such, that whereas the above bound Archibald T. Bennett has appealed from the decision of the judge of Franklin superior court, in the matter of a rule entered against

the marshal of the Appalachicola district, on the sixteenth day of December instant, arising in a suit at law, wherein the Georgia Railroad and Banking Company, Farish Carter, assignee, is plaintiff, against Warren Jordan, defendant.

Now, shall the said Archibald T. Bennett pay, or cause to be paid, all the costs, that may, have, or shall arise, in consequence of taking said appeal to the court of appeals, provided it shall be so adjudged at said court, then this obligation to be void, else to remain in full force and virtue.

A. T. BENNETT, [SEAL.]
H. M. FARRIOR, [SEAL.]
MARVIN B. AVERY. [SEAL.]

GEORGIA RAILROAD AND BANKING COMPANY,
FARISH CARTER, assignee,
vs.
WARREN JORDAN.

Rule vs. the marshal, H. Hawley, to show cause why he should not take the bonds tendered to him as follows, inserted above. And to the rule he answers that, with all respect to the court, he states that he is advised by counsel that he is responsible, if he takes insufficient security, or securities otherwise than is required by law, and that the court cannot relieve him from such his responsibility, by rule or otherwise.

2d. He replies that he holds the said negroes under an execution for the sum of sixteen thousand seven hundred and eighty-three dollars, and costs, in favor of Farish Carter, and that the law requires that parties claiming property so levied upon, shall make oath and give bond in double the amount of execution, and the bonds offered are not in double the amount of the execution.

3d. That the bonds offered are insufficient for the amount in them stated, if the amount was sufficient, and the marshal would not take the persons named on said bonds as security for the sums specified in said bonds.

4th. R. J. Floyd, one of the attorneys of this court, is one of the securities on one of said bonds, which the law does not allow.

5th. That said bonds offered are informal, insufficient, and unlawful in other respects, and do not constitute a safe bond to save the marshal harmless.

All of which is respectfully submitted.

HEZEKIAH HAWLEY, *Marshal.*

Here the defendant rested his case.

This day, to wit, December 15th, 1849, came the parties by their attorneys, and the jury, and the plaintiff offered the following as rebutting testimoy:

1st. The following bill of sale from Warren Jordan to Reuben Thornton, witnessed by A. T. Bennett and J. C. Harris:

GEORGIA, *Baker county*.

For and in consideration of the sum of thirty thousand dollars in hand paid, the receipt whereof is hereby acknowledged, I, Warren Jordan, of the county of Hall, and State aforesaid, hath bargained, and sold, and transferred unto Reuben Thornton, of the county of Hall, and the State aforesaid, the following seventy-nine negro slaves, to wit: Old Tom, Dick, Allen, Cato, Charles, Gilbert, Amos, Merida, Elias, Jack, Abram, Major, Ben, Sam, Jeffrey, Rica, Moses, Americus, Davy, Albert, Billy, Isaac, John, Coon, Joe, making twenty-five fellows. Grandison, Fayette, Andrew, Virgil, Washington, Tom, Marcus, Clem, William, Munroe, Wiley, Charles, Simon, making thirteen boys. Sarah, Martha, Patsy, Jane, Susan, Narcissa, Jinsey, Dinah, Harriet, Fada, Mariah, Milley, Rachael, Penny, Sally, and Nancy, making sixteen women. Charlotte, Caroline, Antoinette, Camilla, Francis, Louisa, Lucinda, Ellen, Sarah, Amanda, Fanny, Avarilla, Mary, Crissa, Abby, Clarissa, and Ireny, making seventeen girls. Jerry, William Henry, Henry, Ellbert, Cornelius, Randall, Henry, and Emeline, making eight infants.

To have and to hold the aforesaid negroes and their future increase, to the only proper use, benefit, and behoof of him, the said Reuben Thornton, his heir and assigns, forever: And I, the said Warren Jordan, for myself, my heirs, executors and administrators, unto the said Reuben Thornton, his heirs and assigns, do forever warrant and defend a good and sufficient title in clear from the claims of all persons whatsoever.

As witness my hand and seal this 11th day of March, 1842.

WARREN JORDAN. [SEAL.]

Signed, sealed, and delivered in presence of—
A. T. BENNETT,
J. C. HARRIS.

And also the following copy of the same as recorded in Franklin county, Florida, upon the oath of said Bennett:

GEORGIA, *Baker county*.

For and in consideration of the sum of thirty thousand dollars in hand paid, the receipt whereof is hereby acknowledged, I, Warren Jordan, of the county of Hall, and State aforesaid, hath bargained, and sold, and transferred unto Reuben Thornton, of the county of Hall, and State aforesaid, the following seventy-nine negro slaves, to wit: Old Tom, Dick, Allen, Cato, Charles, Gilbert, Amos, Merida, Elias, Jack, Abram, Major, Ben, Sam, Jeffrey, Rica, Moses, Americus, Daney, Albert, Billy, Isaac, John, Coon, Joe, making 25 fellows; Grandison, Fayette, Andrew, Virgil, Washington, Tom, Marcus, Clem, William, Monroe, Wiley, Charles, Simon, making thirteen boys; Sarah, Martha, Patsey, Jane, Susan, Narcissa, Jinsey, Dinah, Harriet, Fada, Maria, Milley, Rachel, Penny, Sally, and Nancy, making sixteen women; Charlotte,

Caroline, Antoinette, Camilla, Francis, Louisa, Lucinda, Ellen, Sarah, Amanda, Fanny, Avarilla, Mary, Crissa, Abbey, Clarissa, and Ireney, making seventeen girls; Jerry, William Henry, Henry, Elbert, Cornelius, Randal, and Emeline, making eight infants: To have and to hold the aforesaid negroes and their future increase, to the only proper use, benefit, and behoof of him, the said Reuben Thornton, his heirs and assigns, forever. And I, the said Warren Jordan, for myself, my heirs, executors and administrators, unto the said Reuben Thornton, his heirs and assigns, do forever warrant and defend a good and sufficient title, in clear from the claims of all persons whatsoever.

As witness my hand and seal this 11th day of March, 1842.

WARREN JORDAN. [SEAL.]

Signed, sealed, and delivered in presence of—
A. T. BENNETT,
J. C. HARRIS.

TERRITORY OF FLORIDA,
*Franklin county.*

Before me, C. J. Shepard, deputy for W. W. Holenbeck, clerk of the county aforesaid, personally appeared A. T. Bennett, one of the witnesses of the above recorded instrument of writing, who being duly sworn, deposeth, that he saw the aforesaid Warren Jordan sign, seal, and deliver the above recorded instrument of writing as his own proper act and deed.

W. W. HOLENBECK, *Cl'k*,
By C. J. SHEPARD, *Deputy*.

2d. The following original of Reuben Thornton's bill of sale to Floyd and Bennett.

TERRITORY OF FLORIDA,
*County of Franklin.*

Know all men by these presents that I, Reuben Thornton, of the county of Hall, in the State of Georgia, for and in consideration of the sum of fourteen thousand dollars, to me in hand paid by Robert J. Floyd and A. T. Bennett, of the county of Franklin, and Territory aforesaid, at or before the sealing and delivery of these presents, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Robert J. Floyd and A. T. Bennett, their heirs, executors, administrators, and assigns, the following negro slaves, named as follows, to wit, old Tom, Dick, Allen, Cato, Charles, Gilbert, Amos, Merida, Elias, Jack, Abram, Major, Ben, Sam, Jeffrey, Rica, Moses, Americus, Albert, Billy, Isaac, John, Coon, Joe, making twenty-four men; Grandison, Fayette, Andrew, Virgil, Washington, Tom, Marcus, Clem, William, Munroe, Wiley, Charles, Simon, making thirteen negro boys; Sarah, Martha, Patsey, Jane, Susan, Narcissa, Jinsey, Dinah, Harriet, Fada, Maria, Milley, Rachel, Penny, Sally, and Nancy, making sixteen negro women; Charlotte, Car-

oline, Antoinette, Camilla, Francis, Louisa, Lucinda, Ellen, Sarah, Amanda, Fanny, Avarilla, Mary, Crissa, Oby, Clarissa, and Arrena, making seventeen girls; Jerry, William Henry, Elbert, Cornelius, Randal, Henry, and Emeline, making eight infants; to have and to hold the said negro slaves named as above, bargained and sold, or intended so to be, to the said Robert J. Floyd and A. T. Bennett, their heirs, executors, administrators, and assigns forever. And I, the said Reuben Thornton, for myself, my heirs, executors, administrators, and assigns, the sale of negro slaves named as aforesaid, and as slaves, unto the said R. J. Floyd and A. T. Bennett, their heirs, executors, administrators, and assigns, against me, the said Reuben Thornton, my heirs, executors, and assigns, and against all and every person or persons whatsoever, shall warrant and forever defend by the presents.

In witness whereof I have hereunto set my hand and seal, this the 16th day of March, in the year 1842.

REUBEN THORNTON. [SEAL.]

Signed, sealed, and delivered in presence of—

1. H. W. TERRY,
2. N. BAKER, *J. P.*
3. GAB. J. FLOYD.

3d He next read the following joint deposition of Brown, Johnson, Griffin, and Peebles, relating to Thornton's credibility:

A. T. BENNETT
vs.
FARISH CARTER. } Trover.

Interrogatories to be propounded to Minor W. Brown, Ephraim M. Johnson, W. J. Peebles, R. Griffin, Dr. McAfee, Robert Young, Mr. Rivers, (Hall formerly,) material witnesses for plaintiff, and who reside beyond the State of Florida.

1st interrogatory. Did you know Reuben Thornton in his lifetime? If yea, state how long you were acquainted with him.

2d interrogatory. Were you or not acquainted with said Thornton's general reputation for veracity and truth; if yea, from his said reputation, would you or not believe him on oath?

3d interrogatory. State all that will benefit the plaintiff.

A. G. SEMMES,
W. G. M. DAVIS,
*Attorneys for plaintiff.*

*Cross interrogatories.*

If you answer that you would not believe Reuben Thornton on oath, then state your means of information as to his general character for veracity. If your disbelief is founded upon particular facts, and not upon general character, state these facts.

R. J. MOSES,
J. CARAWAY SMITH,
*For Carter.*

STATE OF GEORGIA,
*Gainesville, Hall county.*

Franklin circuit court.

A. T. BENNETT vs. FARISH CARTER. } Trover, &c.

By virtue of a commission from the circuit court of Franklin county, Florida, to us directed, we have caused Minor W. Brown, Ephraim W. Johnson, Joseph J. Griffin, and William J. Peeples, and Joseph Rivers, (and Dr. McAfee and Robert Young being absent,) the persons in said commission named, to come before us, and after being duly sworn true answers to make to certain interrogatories to said commission annexed, depose and answer as follows:

1st direct interrogatory. They all answer that they knew Reuben Thornton in his lifetime, and from five to ten years before his death.

2d direct interrogatory. They all answer that they were acquainted with his general reputation for veracity and truth, and from that reputation they would believe him on oath, if he was not interested.

3d. They answer, they know nothing further.

M. W. BROWN,
E. M. JOHNSON,
J. J. GRIFFIN,
JOSEPH RIVERS,
W. J. PEEPLES.

Answered, sworn to, and subscribed before us, this 11th day January, 1847.

JOHN D. GRAY, [SEAL.]
JOHN DORSEY, [SEAL.]
*Commissioners.*

*Cross interrogatories.*

To cross interrogatories. They answer, that it is answered in the second direct interrogatory.

M. W. BROWN,
E. M. JOHNSON,
J. J. GRIFFIN,
JOSEPH RIVERS,
W. J. PEEPLES.

Answered, sworn to, and subscribed before us, this January 11, 1847.

JOHN D. GRAY, [SEAL.]
JOHN DORSEY, [SEAL.]
*Commissioners.*

4th. Plaintiff by counsel next introduced Angus N. McKay, who

testified in open court, as in paper hereto annexed, marked A, which was taken down by counsel, read over to him, and signed by himself on the stand.

A.

BENNETT vs. CARTER. } Trover.

DECEMBER 15, 1848.

*Rebutting testimony continued.*

4th. Angus N. McKay sworn. Thornton offered to sell him slaves in controversy in Appalachicola, in 1842 or 1843. Did not represent them as his property, but as the property of Col. Jordan; was selling for him; at first said nothing about mortgage; afterwards did; negroes in marshal's charge several days; don't recollect if agreed upon price; first he offered so many to replevy them; they were attached as Hodge's negroes, at suit [of] Central Bank of Georgia, by John Watson, who undertook to represent the bank; has no memorandum as to the precise time of offer; at first said title would be good, except in Georgia, but pending negotiation said perhaps it would not be good; that he had run the negroes from an execution in Georgia; afterwards spoke of mortgage; trade never was consummated; never knew him until about that time; not acquainted with his general reputation for truth and veracity; execution was vs. Col. Jordan; the negroes were Jordan's, or had been, and he may have had executed to him a title for the purpose of selling.

*Cross examined.*

Did not purchase because he was not satisfied with the title or general character of transaction; did not like the appearance of things; within a week or ten days after this talk with Thornton, Bennett and Floyd purchased, negroes being still in jail; it may have been next day; he believes Thornton offered to sell them to several parties, (stated from common report;) does not recollect hearing him offer them to any one else.

*Re-examined.*

Does not recollect if papers were drawn up; other parties with witness in trade; Thornton was closely questioned, and the matter canvassed, and this matter of title broke it off; he thinks price was agreed upon, and the trade pretty much made at one time, but new lights as to title made them back out entirely; if they had purchased them would have had to replevy them.

A. N. McKAY.

5th. Plaintiff next introduced Nathan Baker as a witness, who upon the stand testified as follows:

*Examined in chief.*

Witness never knew Reuben Thornton until he came here in 1842; when witness first saw Reuben Thornton witness had in his possession, as deputy marshal, acting under Peter W. Gautier, jr., marshal, 74 or 76 negroes, which had been brought to Appalachicola from up the river in the steamboat James Y. Smith or Louisa, both which boats were owned by plaintiff, and commanded by James Y. Smith, a brother-in-law of plaintiff; witness held the said slaves under an attachment, it might have been for about $20,000, (does not know amount; may have been $5,000 to $20,000,) at the suit of Central Bank of Georgia vs. one Hodges; the attachment was taken out by one John Watson, as agent of the Central Bank; when witness so held the said slaves in jail for safe keeping, Reuben Thornton came to him to see whether he could replevy or claim them; witness required from Thornton, as was his invariable habit, a bond with two securities, who would justify in double the amount of the sum sworn to in the attachment; this the law required, and witness did it for his protection; Reuben Thornton applied to him several times to replevy or claim, but witness does not think he made a request of Thornton to give him bond in $40,000, with four securities, said sureties to have visible property to the amount within the jurisdiction of the court, and witness thinks he would remember had such been the case; Bennett never colluded with witness, or endeavored to induce him to prevent Thornton from replevying the negroes; Bennett often asked if he had replevied, or if he was going to replevy, but never dictated to witness as to the replevy or claim bond; witness believes he required Bennett, Floyd, and Farrior to justify—(Thornton's bill of sale to Bennett and Floyd produced and shown, acknowledges his signature as a witness)—believes that Thornton said at the time that he sold the negroes to them, as they were in the marshal's hands, subject to all encumbrances—as they were in the marshal's hands with the encumbrances upon them, he thinks, were the very words Thornton used on delivery; the bill of sale. The costs were to be paid by the purchasers, Bennett, Floyd, and Farrior, the latter having taken an interest after the sale, or perhaps before, but witness does not know, as he was not named in the bill of sale; filed with witness a claim bond. [Here the claim bond was searched for among the records of the court, but the papers, after a thorough search in the case of the Central Bank of Georgia vs. Hodges, could not be found. The papers in a subsequent and smaller suit were found.] Witness could not remember the amount of the bond without seeing it, but knows it must have been in double the amount of the sum claimed under attachment, as this was an invariable rule with him, for the law required it. The bill of sale from Reuben Thornton to Bennett and Floyd was the bill of sale under which parties claimed the negroes.

*Cross examined by defendants.*

Witness did require Reuben Thornton to give two securities who were worth double the amount of the sum sworn to in attachment, and that they should justify; (always did it,) did it for his own protection. Witness would not have required parties to justify where witness was satisfied the parties were worth the amount, nor would he take the bond, although the parties might justify, where he was satisfied they were not worth the amount sworn to. Has no recollection of R. J. Moses coming to him, and offering Roper & Ellison, or any others, and his saying that he would not take them unless they would swear that they were each worth double the amount of the sum sworn to in the attachment. That such offer may have been made, witness will not say it was not, but he has no recollection of it; had it been made, however, he thinks such would have been his answer, as the bond was for a large amount. The law gave witness the right, and he should have exercised it for his own protection.

Were you not very intimately connected with Bennett's business transactions in 1842, and how long have you known Bennett?

Witness had known Bennett for some time, between 1833 and 1837, up to the present time; witness had lived in Appalachicola from 1830 to a period subsequent to the taking of the claim bond. Witness lived with Bennett in 1838; at that time witness thinks Bennett's stock of goods, property, &c., must have been worth from $20 to $25,000, but does not know what he owed at that time. Witness bought for Bennett in New Orleans $10,000 western produce, which was afterwards sold in Appalachicola at a profit. Witness bought for Bennett at one time, while he lived with him, a steamboat called the Commerce; was not as well acquainted with Bennett's business in 1842, as he was in 1838; about 1839 he became deputy marshal; from that time to 1842, he had various executions in his hands against Bennett; the executions were levied upon the steamboats and other property, and although Bennett was hard run for money, yet he paid witness in that time as deputy marshal, from $5,000 to $20,000, and never allowed any of his property to be sold. Witness had executions in his hands against Bennett levied upon his steamboats at the time he took the claim bond, but cannot say to what amount.

What property had Bennett to your knowledge when you took claim bond?

Bennett had the steamboat Louisa, worth $8,000 to $10,000. Commerce, whose name was changed to J. Y. Smith, $8,000 to $10,000; a house and lot in Appalachicola, $4,000 to $5,000, and witness thinks three negroes, Missouri, Rachel, Nathan. Does not know whether the plaintiff had mortgages on his property. The James Y. Smith was levied on as the property of James Y. Smith.

*Cross examination of Nathan Baker continued.*

How long have you known R. J. Floyd; what was his business,

and what property did he have to your knowledge, when you took the claim bond?

Witness had known Floyd for several years. Did not know him to do any other business than act as deputy marshal at one time; stay in the custom house part of the time, [of] which his brother was collector; practised law at another time; never heard of Floyd making any large amount of money. Floyd had to [the] knowledge of witness a house and lot in Appalachicola, 2 women, 3 boys or men. Does not know whether Floyd was in debt or not.

Witness being asked how long have you known James F. Farrior; what was his business; what was his property to your knowledge; was he not embarrassed? If he was not embarrassed, then did he not become so soon afterwards? Did he meet with any sudden loss?

Answers, witness had known Farrior for several years; he was engaged in merchandising. Does not know of any property that Farrior had, except his stock of goods. Does not know what that was worth; did not go to see. Does not know of Farrior being embarrassed at that time; he became embarrassed afterwards, but witness does not remember how soon after, nor does he know from what cause.

Witness being asked if the said parties justified; did you believe that they were worth $20,000 or $40,000?

Answers, that he believed they were all honorable men, and he could not doubt that they must be worth whatever they swore to.

Witness being asked whether he now believed, after reflection and the experience of subsequent events, that they were then worth the amount?

Answers that he must believe it, because they swore to it, and he cannot fix perjury upon gentlemen who stood as they did. Witness further said that, upon reflection, he believed he would have taken the bond after the justification, whether he thought they were worth the amount or not; for he recollects that once Hez. R. Wood justified to five hundred dollars, and he took the bond, although he was satisfied that he was not worth it.

On being further questioned, witness answers that he has not discovered since that time, 1842, that either of the parties had any property in 1842 of which witness was not then aware, and which [he] has not already set forth.

*Cross examination of Nathan Baker continued.*

On being asked by defendant's counsel, whether he subsequently levied an attachment on a part of the negroes so purchased by Bennett and Floyd from Reuben Thornton, and whether said attachment was at the suit of the Georgia Railroad and Banking Company vs. Warren Jordan?

Witness answers, that he did, about the month of April, levy an attachment on some 18 or 20 negroes, in suit having been instituted by attachment and foreclosure of mortgage. That when the writ was placed in his hands, he went to Bennett, and told him that the mort-

gage petition was filed, and an attachment granted, and that he must make a levy; that Bennett gave him a list of about twenty negroes, and the names of one or two; that he refused to give the names of the rest, saying he was not bound to do so; that he would have levied on more, but Bennett said those were all he had; some were gone, and some were sold. He then took down the number of negroes, as Bennett gave them; names are known; that he did not see the negroes when he made the levy, and thinks there were but three or four that he could have identified three weeks after; that he did not take them out of Bennett's possession, nor did he take a bond for their forthcoming until about a month afterwards. (Here the levy was shown to witness, and recognised as the levy made; and the claim bond was shown and assented to as the one received by witness.) Witness would have levied on the balance; but they had been carried off by Floyd and Farrior, or at all events could not be found. These levied on were all he could hear of, and they were given in as before stated, by Bennett, when he went to levy the attachment. These negroes were afterwards sold by Hez. Hawley, marshal, under a foreclosure of mortgage of the Georgia Railroad Bank, at the suit of Farish Carter.

Witness being asked whether he had not bought two of the negroes referred to, from Bennett and Floyd?

Answers, that he agreed to buy Albert and Clarissa, at a price to be agreed upon, his costs to be taken in payment of as much as it would cover of the price. That his costs were afterwards reduced about one-half, and he gave up one of the negroes, (Albert,) and that Clarissa was taken and sold by the marshal under the foreclosure.

Witness being asked whether he had ever heard plaintiff admit that he had gone on Long's plantation in Jackson county, with a band of armed men, for the purpose of carrying off the negroes sold by Hawley, marshal, in Appalachicola, in December, 1842, and January, 1843, and now sued for?

Answers, that some time in 1844 Bennett told him that he had gone to Richard Long's plantation with John Milligan, Isaac Brown, Bill Rowlett, Tom Smith, and perhaps some others, in the night, for the purpose of carrying off the negroes which had been sold in Appalachicola. That he had succeeded in getting sixteen, and had scattered them in Alabama, so as to prevent their being retaken.

Witness being asked whether this Tom Smith was the same man who was afterwards hung for negro stealing?

Answers, yes.

Witness being asked whether plaintiff told him, that in capturing said negroes Richard H. Long had come out, and that plaintiff shot at him?

Answers, the plaintiff said it was in the night, and that he shot towards Long; understood him to mean that he shot at Long.

Witness being asked whether Camilla was among the negroes thus taken and scattered, and whether, while so scattered, and with a knowledge of the facts, he had purchased her, and for how much?

1931.

Answers, that he made a bargain with Bennett, for the purchase of Camilla, at $250, while she was in Alabama, while she was taken from Long's, and after Bennett had told him the circumstances above referred to. But before he finally closed his trade, Bennett and Carter, the defendants, were about compromising; and considering that if they settled, there could be no difficulty about the title, he raised the price to $350. That he purchased Camilla, but that Carter and Bennett did not settle. Bennett was owing witness for board, feeding hands, and something on account [of] the costs in the Thornton case, and he paid him in settlement and purchase of Camilla.

Witness being asked whether plaintiff ever told him, witness, that he had gone with Harris up to Warren Jordan's to get a bill of sale of the negroes?

Answers, that Bennett did say he had gone up the river with Harris, and Harris got a bill of sale; and on another occasion when he, witness, told Bennett that the mortgage would hold the negroes, Bennett doubted if the mortgage would bind the negroes in this Territory; but witness was of a different opinion, as he stated to him Bennett said at the time he was negotiating with Thornton, that Thornton had Jordan's bill of sale.

Witness being asked whether Bennett had not accused him of defrauding him, Bennett, out of some large sum in the purchase of the Commerce?

The question was objected to.

Defendant then showed that he expected to prove that Baker, influenced by fear of exposure from Bennett, had been subservient to his purposes.

Objection being withdrawn,

Witness answers, that he never heard of this until after, being the transactions in 1842, arising out of the bond and claim, had been done and finished. That then he had a quarrel with Bennett on account of money Bennett owed him; and then Bennett, for the first time, wrote to witness a letter, charging him with defrauding him in the purchase of the Commerce. Witness says, that the whole charge is an outrageous slander, false from beginning to end.

Witness being asked whether the negroes were kept in town after the sale, or what was done with them?

Answers, they were carried directly from the jail to a schooner, which went down the bay. Further witness does not know. Bennett brought his portion back to town, and stated that he meant to keep them there, and to contest any claim against them.

Witness being asked whether debts by mortgage against these negroes were momently expected from Georgia?

Answers, yes; and says before Major Floyd, the collector, would clear the negroes, he required witness as deputy marshal to give a certificate that the necessary securities had been given to him, and the costs paid, so that he, as marshal, had no further claim upon them.

Major F. said he required this, because he had once before had some difficulty about a similar matter.

*Nathan Baker re-examined by plaintiff.*

Was this the mortgaged debt from which the negroes were run; or was it debts that Randal Jones and Watson were supposed to have sent up after?

Witness answers, that he does not know what mortgage, but that he remembers it was reported that Randal Jones had gone to Columbus to get some mortgage debt.

Here the examination of Nathan Baker closed.

The next day he came into court to say that he believed that the steamboats held by Bennett in 1842 were held jointly with James Y. Smith, and that he had had a conversation since his last examination with Bennett, in regard to the fraud charged upon witness, and Bennett was satisfied it was unfounded; to which Bennett, by his counsel, assents.

6th. Plaintiff next offered in evidence the deposition of Ephraim W. Johnson and Minor W. Brown, which were objected to by defendant's counsel, but which objections were overruled, and said depositions read by the order of the court; to which said ruling defendant, by counsel, excepted, and which depositions were then read to the jury as follows:

BENNETT vs. CARTER. } Trespass on the case in trover, &c.

Copy of interrogatories for Ephraim M. Johnson and Mino. W. Brown, witnesses for plaintiff, and who reside in the State of Georgia.

1st. Do you know the parties?

2d. State whether you are well acquainted with the quality and value of the following real estate, lying and being in the county of Hall, in the State of Georgia, formerly the property of Warren Jordan, to wit:

Lots 149, 150, 152, 153, 167, 168, 154, and 136, the same formerly one body, lying on both sides of Flat creek, formerly adjoining lands of Cooper, Mitchel, and others. Also, the improvements thereon, consisting of dwelling-houses, out-houses, &c. Also, the following lots in the town of Gainesville, Ga., to wit, part of lot No. eleven, owned formerly by said Jordan, lot No. twelve, and improvements, fronting on the public square; if yea, state what said property, in your opinion, was worth in 1840, and what, in your opinion, would said property have brought if sold separate in fair market at public sale, and not subject to encumbrance. State fully.

3d interrogatory. Do you know of said land and property being sold under any execution in favor of Farish Carter? If yea, when was it

sold, who was the purchaser, at what price, and state the whole of the circumstances under which said sale took place. Was any thing said at the sale about the property being under mortgage to the Georgia Railroad and Banking Company, or was any thing said calculated to prevent said property bringing a full and fair price? Please state every thing you know in relation to this matter.

A. G. SEMMES, *Plaintiff's attorney.*

*Cross interrogatories.*

1st. Have you any interest in the suit now pending?

2d. State how you form your opinion of the value of the lots referred to in 2d interrogatory; state whether there were encumbrances on the lots; if you answer that they would have brought more sold separately, answer at whose direction they were sold otherwise than separately; do you know of your own knowledge that defendant required them to be sold in one body?

R. J. MOSES and
J. C. SMITH,
*Defendant's attorneys.*

A. T. BENNETT
vs.
FARISH CARTER. } Trespass on the case in trover.

STATE OF GEORGIA, *Gainesville, Hall county.*

By virtue of a commission [issued from the honorable circuit court] of Franklin county, State of Florida, to us directed, we have caused Ephraim M. Johnson and Minor W. Brown, the persons named in said commission, to come before us, and after being duly sworn true answers to make to certain interrogatories to said commission annexed, depose and answer as follows:

1st direct interrogatory. They both answer they know Farish Carter.

2d direct interrogatory. Ephraim M. Johnson answers, that he is tolerably well acquainted with said lands and improvements. He thinks said lands and improvements were worth in 1840 five thousand dollars, and is of opinion, that said property, if sold separately, and not subject to encumbrance, would have brought $5,000, or thereabouts.

2d direct interrogatory. Minor W. Brown answers, that he is tolerably well acquainted with said lands, and lots, and improvements. Thinks said lands, and lots, and improvements were worth, in 1840, $4,625, and is of opinion that said property, if sold separately, and not subject [to] encumbrance, would have brought $5,125, or thereabouts.

They both answer, that town lots 11 and 28 were subject to a mortgage in favor of James Law and others, older than any other encum-

brance, and have been since sold under it. These two, if not subject to encumbrance, were worth five hundred dollars.

3d direct interrogatory. Ephraim M. Johnson answers, that said lands were sold under fi. fas., in favor of Farish Carter, and other fi. fas., in the summer of 1842, and was purchased by said Carter at between one hundred and twenty and fifty dollars. All the lots of land were put up and sold in one lot, and town lots separately, all sold subject to a mortgage in favor of Georgia Railroad and Banking Company. Witness says that he insisted on sheriff selling lots of land separately, and Carter said to witness, that if he would not interfere that he would satisfy certain costs then due witness as clerk.

3d direct interrogatory. Minor W. Brown answers, that he was present at said sale, but does not know under what fi. fas. said property was sold, nor at what price, nor who was the purchaser. Witness says the sale, and circumstances attending it, were so confused that he was afraid to bid for the property.

E. M. JOHNSON,
M. W. BROWN.

Answered, sworn to, and subscribed before us, this 11th day January, 1847.

J. J. GRIFFIN, [SEAL.]
JOHN GRAY, [SEAL.]
*Commissioners.*

*Cross interrogatories.*

1st cross interrogatory. They both answer, they have not.

2d cross interrogatory. They both answer, they form their opinion of the value of the lots from personal knowledge. They answer, that there were incumbrances on lots 11 and 28, as answered in the second direct interrogatory. They both answer, that they have answered in the second direct interrogatory, as to what they would have sold for if sold separately, and not subject to incumbrance.

E. M. Johnson answers, that the property was sold all in a lot, at the instance of Carter, or his attorney.

M. W. Brown knows nothing about any direction given in relation to sale.

E. M. JOHNSON,
M. W. BROWN.

Answered, sworn to, and subscribed before us, this 11th day of January, 1847.

JOHN GRAY, [SEAL.]
J. J. GRIFFIN, [SEAL.]
*Commissioners.*

7th. Plaintiff next offered Benjamin M. Griffin's deposition, which was objected to by defendant.

Objections overruled by court, and deposition ordered to be read by

court; to which ruling defendant excepted, and said deposition was then read to the jury, as follows:

BENNETT vs. CARTER. } Trespass on the case. Trover, &c.

Copy of interrogatories for Benjamin M. Griffin, witness for plaintiff.

1st. Do you know the parties?

2d. State whether you are well acquainted with the quality and value of the following real estate, lying and being in the county of Hall, in the State of Georgia, formerly the property of Warren Jordan, to wit, lots 149, 150, 152, 153, 167, 168, 154, and 136, the same forming one body, lying on both sides of Flat creek, formerly adjoining lands of Cooper, Mitchel, and others; also the improvements thereon, consisting of dwelling-houses, out-houses, &c. Also, the following lots in the town of Gainesville, Georgia, to wit, part of lot No. 11, owned formerly by said Jordan; lot No. 12, and improvements, fronting on public square; lot No. 28, with improvements? If yea, state what said property, in your opinion, was worth in 1840? And what, in your opinion, would said property have brought, if sold separate, in fair market, at public sale, and not subject to encumbrance? State fully.

3d. Do you know of said land and property being sold under execution, in favor of Farish Carter? If yea, when was it sold, who was the purchaser, at what price, and state the whole of the circumstances under which said sale took place. Was any thing said at the sale about the property being under mortgage to the Georgia Railroad and Banking Company, or was any thing said calculated to prevent said property bringing a full and fair price? Please state every thing you know in relation to this matter.

A. G. SEMMES,
*Plaintiff's attorney.*

*Cross interrogatories.*

1st interrogatory. Have you any interest in the suit now pending?

2d interrogatory. State how you form your opinion of the value of the lots referred to in 2d interrogatory. State whether there were encumbrances on the lots.

3d interrogatory. If you answer that they would have brought more, sold separately, answer at whose direction they were sold otherwise than separately. Do you know of your own knowledge that defendant required them to be sold in one body?

R. J. MOSES and
J. C. SMITH,
*Defendant's attorneys.*

STATE OF FLORIDA,
*Franklin county, ss.*

By virtue of a commission from the honorable the circuit court of the county of Franklin, Florida, to us directed, we have caused Benjamin F. Griffin, one of the witnesses (the other two being absent) in said commission named, to come before us, and after being duly sworn, true answers to make to certain interrogations annexed, deposeth and answers as follows:

1st. Witness answers, yes.

2d. Witness answers, he is acquainted with the lands in the second district, (now Baker,) formerly Early county, Georgia, formerly owned by Warren Jordan, lying on the Coolawahee Creek, and should consider that settlement worth about eight dollars per acre, and believe it would have brought at that time the price above named, to wit, in 1840, if sold without any encumbrance.

3d interrogatory. Witness answers, he knows nothing of the sale, and nothing further to benefit plaintiff.

B. M. GRIFFIN.

Sworn to and subscribed before us, this 8th day of February, 1847.

EDWARD McCULLY, [L. S.]
JAMES. A. ABORN, [L. S.]
*Commissioners.*

*Answers to cross interrogations.*

1st cross interrogatory. Witness answers, I have not.

2d cross interrogatory. Witness answers, he forms his opinion from having lived in the neighborhood, and having bought and sold lands in that section. I do not know whether there were any encumbrances on the lands or not.

3d cross interrogatory. Witness answers as in the direct interrogatory.

B. M. GRIFFIN.

Sworn to and subscribed before us, eighth day of February, 1847.

EDWARD McCULLY, [L. S.]
JAMES A. ABORN, [L. S.]
*Commissioners.*

8th. He next offered George W. Collier's deposition, to which defendant objected. But his objection was overruled, and said deposition ordered to be read by the court, to which defendant excepted, and was then read as follows:

Interrogatories to be propounded to George W. Collier, a material witness for plaintiff, and who resides beyond the limits of Franklin county.

1st. Do you know the parties?

2d. Are you acquainted with the quality, value, &c., of the following lots of land in Baker county, Georgia, second district, to wit, Nos. 219, 220, 271, 272, 273, 274, 275, 285, and 286? If yea, state what, in your opinion, said lots of land were worth in 1845. State the number [of] acres, quality, and improvement of said land.

3d. Do you know that said land was sold in July, 1845, at public sale? If yea, state by whom was it sold, at whose instance was it sold, and under what process.

4th. Please state fully and particularly why it was said land did not bring more than $2,800.

5th. Who was the purchaser of said land at said sale; was or not Carter interested in said purchase; was any purchase money paid to the officer; if yea, by whom? Please state fully and particularly.

6th. Previous to the sale of said land do you or not know that Benjamin Jordan took possession of said land, commenced stocking and farming the same, at the request and under the direction of said Carter?

7th. Please state whether said Jordan was not jointly interested with said Carter in said lands. State fully and particularly.

8th. Please state whether you are acquainted with lots Nos. 179, 180, and 224, in the second district, and 181, in third district, Baker county, Georgia; if yea, how many acres are they; what was the value in 1845? And please state whether said lands have been sold, under any legal process, since 1843; if yea, under what process and at whose instance. If said lands have not been sold as aforesaid, who has possession of the same; has Carter had possession of the same, or has he put any one in possession?

9th. Please state all you know that will benefit plaintiff.

A. G. SEMMES,
*Plaintiff's attorney.*

I object to 1, 2, 3, 4, 5, 6, 7, on the ground that the same facts can be proven by better evidence, to wit, the officer's return; and the 4th interrogatory is, besides, leading.

R. J. MOSES.

GEORGIA, *Baker county.*

By virtue of a commission from the honorable the circuit court of the county of Franklin, Florida, we have caused George W. Collier, the witness in said commission named, to come before us; and, after being sworn true answers to make to certain interrogatories annexed, deposeth and answers as follows.

1st interrogatory. He answers, he knows the parties.

2d interrogatory. He answers, he knows 219, 220, 271, 272, 273, 274, 275, 286, in the second district of Baker county. Some of the lands are improved; he would think that the lands were worth, in 1845, from three to five dollars per acre, and that each lot contains two hundred and fifty acres, according to survey; the quality would average about 2d quality for this county.

3d interrogatory. He answers, the land was sold by him on the 2d day of July, 1845, as sheriff, at the instance of Benjamin S. Jordan. As to the process I am not now positive, but think it was Carter & Jordan vs. Warren Jordan.

4th. As to the land not bringing more was, in my opinion, that defendant's counsel was misinformed as to the time the sale would be brought on, as he wrote to me the sale would be postponed; but the advertisement still went on, and on the day of sale Col. Hines and Benjamin S. Jordan *was* present and had the sale made.

5th interrogatory. The land was bid off by Colonel B. S. Jordan, and the titles were made, as well as I now recollect; part of the lots to B. S. Jordan, and part to the Milledgeville Bank; but this you had best refer to on record. There was no money paid in, except my fees.

6th. Col. Jordan did commence farming on said lands previous to the sale, but as to whose direction I do not know.

7th. He answers, he does not know whether Carter was jointly interested or not, but thinks *they* were.

8th. He answers, he sold Nos. 179, 180, in the 2d of Baker, and 181 in the 3d, on the 2d February, 1847; thinks they are about second quality land; each lot contains 250 acres. This sale was conducted well, and I do not know whether they would have brought any more under any circumstances. I do not recollect of Carter having any control of them.

9th. He does not know any thing further that will benefit plaintiff.

GEO. W. COLLIER.

Answers sworn to and subscribed before us, this the first day of December, 1848.

HENRY HORA, *Com'r*, [L. S.]
EDM'D RICHARDSON, *Com'r*. [L. S.]

9th. He next offered another exemplification of his own, of record in the case of Farish Carter vs. Archibald T. Bennett, in superior court, Muscogee county, Georgia, which reads as follows:

GEORGIA, *Muscogee county*.

To the honorable superior court of said county.

The petition of Farish Carter sheweth, that Archibald T. Bennett, of said county, has injured and damaged your petitioner in the sum of sixteen thousand dollars; for that whereas the said plaintiff, your petitioner, heretofore, to wit, on the first day of May, in the year eighteen hundred and forty four, to wit, in said county, was lawfully possessed, as of his own property, of certain negro slaves, to wit: Cato, a man, of the age of twenty-eight years, of dark complexion, and of the value of one thousand dollars; and Elias, a man, of the age of twenty-four years, of the like complexion, and of the value of one thousand dollars; and Sam, of the age of forty-six years, of the like complexion, and value of one thousand dollars; and John, a man, of the age of twenty-four years, of like complexion, and of the value of one thousand

dollars; and Dinah, a woman, of the age of twenty-three years, of the like complexion, and of the value of eight hundred dollars; and Amanda, the girl child of Dinah, of the age of six years, of like complexion, and of the value of four hundred dollars; and Fanny, a girl child of Dinah, and of like complexion, and of the age of four years, and of the value of four hundred dollars; and Emeline, a girl child of Dinah, of like complexion, of the age of two years, and of the value of three hundred dollars; and an infant child of said Dinah, of the value of five hundred dollars, whose name, age, and sex, is unknown; and Jane, a woman, of the age of twenty-one years, of like complexion, and of the value of one thousand dollars; and an infant child of said Jane, of the value of two hundred dollars, whose name, sex, and age, are unknown; and Nancy, a woman, aged twenty years, of like complexion, and of the value of one thousand dollars; and an infant child of said Nancy, of the value of two hundred dollars, whose name, age, and sex, are unknown; and Camilla, a girl, aged twelve years, of like complexion, and of the value of six hundred dollars; and Charles, a boy, aged nine years, of like complexion, and of the value of six hundred dollars; and Annetta, a girl, of the age of four years, and of like complexion, and value of three hundred dollars; and, being so possessed thereof, your petitioner afterwards, to wit, on the day and year aforesaid, to wit, in said county, casually lost the said several negro slaves out of his possession; and the same afterwards, to wit, on the day and year first aforesaid, to wit, in said county, came to the possession of the said defendant by finding.

And whereas, also, heretofore, to wit, on the first day of May, in the year first aforesaid, to wit, in the county aforesaid, your petitioner was lawfully possessed of certain other negro slaves, to wit: Cato, a black man, of the age of forty-five years, and of the value of one thousand dollars; and Elias, a black man, of the age of twenty years, and of the value of one thousand dollars; and Sam, a black man, of the age of thirty years, and of the value of one thousand dollars; and John, a mulatto man, of the age of about forty-five years, and of the value of one thousand dollars; and Dinah, a black woman, of the age of thirty-eight years, and of the value of one thousand dollars; and her four children, to wit, Annette, aged eight years, and of the value of five hundred dollars, and of yellow complexion; and Amanda, aged six years, and of the value of five hundred dollars, and of yellow complexion; and Fanny, of the value of five hundred dollars, aged four years, and of yellow complexion; and Emeline, of the value of five hundred dollars, and of yellow complexion, and aged two years; and Jane, a mulatto female, of the age of twenty years, and of the value of one thousand dollars; and Henry, infant child of Jane, aged one year, and of the value of five hundred dollars; and Nancy, a yellow woman, aged thirty-five years, and of the value of one thousand dollars; and Enoch, the child of Nancy, aged five years, and of the value of five hundred dollars; and Camilla, a dark girl, aged ten years, and of the value of one thousand dollars; and Charles, a dark boy, aged

four years, and of the value of five hundred dollars; and Henry Allen, a boy of dark complexion, of the age of two years, and of the value of five hundred dollars; and, being so possessed thereof, your petitioner afterwards, to wit, on the day and year last aforesaid, to wit, in said county, casually lost the said negroes out of his possession; and the same afterwards, to wit, on the day and year last aforesaid, to wit, in said county, came to the possession of the said defendant [by] finding; yet the said defendant, well knowing the said several negro slaves to be the property of your petitioner, and of right to belong and appertain to him, but intending to defraud your petitioner in this behalf, hath not as yet delivered the said several negro slaves, or any or either of them, to your petitioner, although often requested so to do; and afterwards, to wit, on the day and year first aforesaid, to wit, in said county, converted and disposed of said several negro slaves to his own use, to the damage of your petitioner twenty thousand dollars. Wherefore your petitioner sues and prays that process may issue, requiring the said defendant to be and appear at the next superior court of said county, to answer your petitioner in an action of trover, &c.

HOLT & ALEXANDER,
*Plaintiff's attorneys.*

GEORGIA, *Muscogee county.*

Personally came before me, Josephus Echols, one of the justices of the peace of the inferior court of said county, Farish Carter, who being duly sworn, on oath saith, that he is about to commence an action at law against Archibald T. Bennett, for the recovery of certain negro slaves, to wit:

Cato, a man, about twenty-five or thirty years of age, and of the value of $400;

Elias, a man, about twenty or twenty-five years of age, and of the value of $500;

Sam, a man, about forty or fifty years of age, and of the value of $150;

John, a man, about twenty or twenty-five years of age, and of the value of $550;

Dinah, a woman, about twenty or twenty-five years of age, and of the value of $400;

Amanda, child of Dinah, about six years of age, and of the value of $200;

Fanny, another child of Dinah, about four years old, and of the value of $175;

Emeline, another child of Dinah, about two years of age, and of the value of $150;

Another infant child of Dinah, name and sex unknown, and of the value of $100;

Jane, a woman, about twenty years of age, and of the value of $500;

An infant child of Jane, name and sex unknown, and of the value of $100;

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Nancy, a woman, about twenty years of age, and of the value of $400;

An infant child of Nancy, name and sex unknown, and of the value of $100;

Camilla, a girl, about twelve years of age, and of the value of $350;

Charles, a boy, about eight years of age, and of the value of $300;

Annetta, a girl, about three years of age, and of the value of $150.

The whole of said negroes, being sixteen in number, being of the aggregate value of four thousand five hundred and twenty-five dollars.

And deponent further saith, that he has reason to apprehend that said negroes have been, or will be, eloigned or removed away, and that they will not be forthcoming to answer the judgment, execution, or decree, that shall be made in said case; and deponent further saith, that he doth verily and bona fide claim said negroes.

(Signed) FARISH CARTER.

Sworn to and subscribed before me, this 24th day of Feb'ry, 1845.

(Signed) JOSEPHUS ECHOLS, *J. I. C.*

GEORGIA, *Muscogee county*.

FARISH CARTER vs. A. T. BENNETT. } Trover and conversion.

To the sheriff of said county, greeting:

The defendant is hereby required personally, or by attorney, to be and appear at the next superior court, to be held in and for said county on the fourth Monday in May next, then and there to answer plaintiff's demand in an action of trover and conversion, as in default thereof the court will proceed as to justice may appertain.

Witness the honorable Joseph Sturgis, judge of said court, this 24th day of February, A. D. 1845.

B. BEASLEY, *Clerk*.

I have served the defendant personally with a copy of this writ and process, and the defendant having refused to give bond and security in terms of law, and the property sued for not having been produced and forthcoming, to be seized by me, I have thereupon committed him to jail, this 4th day of March, A. D. 1845.

F. A. BRANNON, *Sheriff*.

May term, 1845.

FARISH CARTER vs. ARCHIBALD T. BENNETT. } Trover and bail pendenti lite.

No answer being filed at the present term, it is ordered that judgment be entered by default.

FARISH CARTER
vs.
A. T. BENNETT.
} Trover, &c.

November term, 1845, continued.

Muscogee superior court, May term, 1846.

FARISH CARTER
vs.
A. T. BENNETT.
} Trover and bail.

1. David W. Brown,
2. Seth Cobb,
3. William Shoffner,
4. William Hearne,
5. F. C. Johnson,
6. William Brown,
7. William Weathers,
8. Joseph Scott,
9. Henry Saunders,
10. Reuben R. Hudgins,
11. R. H. Harris,
12. Newton M. King.

We, the jury, find for the plaintiff the principal sum of thirty-eight hundred and fifty dollars, as the aggregate value of the negroes in said declaration, to wit, Cato, Elias, John, Sam, Dinah, and her four children, to wit, Annett, Amelia, Fanny, Emeline; Jane and her child, Nancy and her child, Camilla, Charles, and Henry, which may be discharged by the delivery of said negroes within thirty days, and the further sum of thirteen hundred and ten dollars and thirty-eight cents, as the aggregate hire of said negroes to this date, together with the costs of this suit.

WILLIAM BROWN, *Foreman*.

May 19th, 1846.
May term, 19th May, 1846.

Whereupon, it is considered by the court, that the plaintiff do recover of the defendant the sum of thirty-eight hundred and fifty dollars for his principal debt, which may be discharged by the delivery of the following negroes, within thirty days from this date, to wit, Cato, Elias, John, Sam, Dinah and her four children, to wit, Annette, Amelia, Fanny, and Emeline; Jane and her child, Nancy and her child, Camilla, Charles, and Henry; and also the further sum of thirteen hundred and ten dollars and thirty-eight cents, as the aggregate hire of said negroes; and also the further sum of twenty-five dollars and sixty-seven cents, for costs laid out and expended in this behalf; and the defendant in mercy, &c.

HINES HOLT, *Plaintiff's attorney*.

GEORGIA, *Muscogee county*.

To all and singular the sheriffs of said State, greeting:

We command you, that of the goods, chattels, lands, and tenements of Archibald T. Bennett, you cause to be made the sum of thirty-eight hundred and fifty dollars, principal, which may be discharged by the

delivery of the following negroes within thirty days from the 19th May, 1846, to wit, Cato, Elias, John, Sam, Dinah and her four children, to wit, Annette, Amelia, Fanny, and Emeline; Jane and her child, Nancy and her child, Camilla, Charles, and Henry; and also the further sum of thirteen hundred and ten dollars and thirty eight cents, as the aggregate hire of said negroes; and also the further sum of twenty-five dollars and sixty-seven cents, for costs, with interest on the principal, and the hire of said negroes from 19th May, 1846, which Farish Carter, lately in our superior court of said county, recovered against the said Archibald T. Bennett, for his principal, hire, and costs; and that you have the said several sums of money before the judge of our said court on the second Monday in November next, to render to the plaintiff his principal, hire, and costs aforesaid, and have you then and there this writ.

Witness the honorable Robert B. Alexander, judge of said court, this 25th day of June, 1846.

THAD. STURGIS, *Clerk*. [L. S.]

GEORGIA, *Muscogee county*.

No property of the defendant to be found in this county, subject to this fi. fa.

JNO. M. BETHUNE, *Sh'ff*.

August 22d, 1846.

GEORGIA, *Muscogee county*.

I, Thaddeus Sturgis, clerk of the superior court of said county, do hereby certify, that the above and foregoing pages contain a full, true, and perfect exemplification of all the proceedings had in the case of Farish Carter against Archibald T. Bennett, as appears of record, and also of papers now of file in my office.

[SEAL.] Given under my hand and the seal of office this 24th day of June, 1846.

THAD. STURGIS,
*Clerk sup. court, M. C.*

GEORGIA, *Muscogee county*.

I, Robert B. Alexander, judge of the superior courts of the Chattahoochie circuit in said State, do hereby certify, that Thaddeus Sturgis, whose name appears to the above and foregoing certificate, is clerk of the superior court of Muscogee county, and that full faith and credit ought to be had and given to his attestation as such, and that the same is in due form.

Given under my hand and official signature, this 5th August, 1846.

ROBERT B. ALEXANDER,
*Judge S. C. C. C.*

*Plaintiff's rebutting testimony continued.*

10th. Plaintiff next offered two bonds, dated respectively 29th of De-

cember, A. D. 1842, and 9th day of January, A. D. 1843, which two papers were objected to by defendant, but said objections were overruled, and said papers ordered to be read by the court; to which ruling defendant excepted, and which said papers (after testimony of Hurd, inserted below,) were read to the jury, and are as follows:

FLORIDA, *county of Franklin.*

Personally appeared before me, Nathan Baker, a justice of the peace in and for said county, A. T. Bennett, who, being duly sworn, deposes and says, that the following negro slaves, to wit, Rica, Tom, Charles, Elias, Pink, Pink's two children, Charles and Henry, Dinah, Amarilla, Fanny, Emeline, Antoinette, Clarissa, Nancy and child, Ellen, Sam, levied on by the marshal of the Appalachicola district to satisfy an execution in favor of Farish Carter, assignee of the Georgia Railroad and Banking Company, vs. Warren Jordan, is the property of this deponent.

A. T. BENNETT.

Sworn to and subscribed before me this 29th December, 1842.

N. BAKER, *J. P.*

Know all men by these presents, that we, A. T. Bennett, James F. Farrior, E. C. Roberts, Marvin B. Avery, Wm. H. Starke, H. M. Farrior, J. D. Myers, R. C. Adams, acknowledge ourselves held and firmly bound unto Farish Carter, assignee of the Georgia Railroad and Banking Company, in the sum of thirty-three thousand five hundred and sixty-six dollars, for the true payment of which we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this the 29th day of December, A. D. 1842.

The condition of the foregoing bond is such, that whereas the marshal of the Appalachicola district has, by virtue of an execution in favor of said Carter, assignee as aforesaid, vs. Warren Jordan, levied on the following negro slaves, to wit, Rica, a black boy, 17 years old; Tom, a black boy, 18 years old; Charles, a man, 35 or 40 years old; Elias, a yellow boy, 20 years old; Pink or Jinsey, a yellow woman, 22 years old; Pink's two children, Charles and Henry; Dinah, a black woman, 35 years old; Amarilla, a yellow girl, 5 or 6 years old; Fanny, a yellow girl, 3 or 4 years old; Emeline, a yellow girl, 2 years old; Antoinette, a yellow girl, 7 or 8 years old; Clarissa, a black girl, 14 years old; Nancy and child, a woman, 35 years old; Ellen, a girl, 10 or 11 years old; Sam, a black man, 30 years old.

And whereas said Bennett has interposed his claim to said property, now if the said Bennett shall deliver said negro slaves upon demand of said officer, if the same shall be adjudged to be the property of the said defendant in execution, and pay the said Carter, plaintiff, all damages which the jury on the trial of the right of property may find in his favor, if it should appear to the jury that such claim was inter-

1938.

posed for the purpose of delay, then this bond to be void, else remain in full force and virtue.

A. T. BENNETT, [L. S.]
JAS. F. FARRIOR, [L. S.]
E. C. ROBERTS, [L. S.]
MARVIN B. AVERY, [L. S.]
WM. H. STARKE, [L. S.]
H. M. FARRIOR, [L. S.]
J. D. MYERS, [L. S.]
R. C. ADAMS. [L. S.]

Know all men by these presents, that we, Archibald T. Bennett, James F. Farrior, Enoch C. Roberts, Jacob D. Myers, William Hickok, Robert C. Adams, W. H. Starke, and Isaac Brown, acknowledge ourselves held and firmly bound unto Farish Carter, assignee of the Georgia Railroad and Banking Company, in the sum of thirty-three thousand five hundred and sixty-six dollars, for the true payment of which we bind ourselves, and each of our heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this the ninth day of January, one thousand eight hundred and forty-three.

The conditions of the foregoing bond is such, that whereas the marshal of the Appalachicola district has, by virtue of an execution in favor of said Farish Carter, assignee as aforesaid, vs. Warren Jordan, levied on the following negro slaves, to wit:

Jeff, a black man, about 35 or 40 years old;
Isaac, a black man, 20 years old;
Allen, a black man, 29 years old;
Cato, a black man, 35 or 40 years old;
John, a yellow man, 40 years old;
Joe, a black man, 20 years old;
Amos, a yellow man, 28 or 30 years old;
Patsey and child, a dark woman, 28 years old;
Sally, a black woman, 40 years old;
Andrew, a black boy, 11 years old;
Albert, a yellow man, 20 years old;
Irene, a yellow girl, 13 years old; and whereas said Bennett has interposed his claim to said property:

Now, if the said Bennett shall deliver said negro slaves upon demand of said officer, if the same shall be adjudged to be the property of the said defendant in execution, and pay the said Carter, plaintiff, all damages which the jury, on the trial of the right of property, may find in his favor, if it shall appear to the jury that such claim was interposed for the purpose of delay, then said bond to be void, else to remain in full force and virtue. This the 9th day of January, 1843.

A. T. BENNETT, [SEAL.]
JAS. F. FARRIOR, [SEAL.]
E. C. ROBERTS, [SEAL.]

J. D. MYERS, [SEAL.]
WM. HICKOK, [SEAL.]
R. C. ADAMS, [SEAL.]
WM. H. STARKE, [SEAL.]
ISAAC BROWN. [SEAL.]

FLORIDA, *county of Franklin.*

Personally appeared before me, Nathan Baker, justice of the peace for said county, Archibald T. Bennett, who being duly sworn, deposeth and says, that the following negro slaves, to wit, Jeff, Isaac, Allen, Cato, John, Amos, Joe, Patsey and child, Sally, Andrew, Albert, and Jinsey, levied on by the marshal of the Appalachicola district, to satisfy an execution in favor of Farish Carter, assignee of the Georgia Railroad and Banking Company, vs. Warren Jordan, is the property of this deponent.

A. T. BENNETT.

Sworn to and subscribe d before me, this the 9th January, 1843.
N. BAKER, *J. P.*

Before reading said bonds, plaintiff introduced Joseph Hurd, a witness, upon the stand, who testified as follows: Being shown the bonds, has seen them before; knows they were tendered by Bennett to Hawley, as marshal, on or about their respective days of date, and that Hawley refused them. Proves signature of Bennett, E. C. Roberts, James Farrior, H. Farrior, Jacob D. Myers, R. C. Adams; did not know Avery or Stark's; and on other bond, did not know Hickok's or Brown's; all were on the bonds when they were offered. Defendant waived proof of other names not proved by Hurd, or admitted them to be genuine, not waiving objections to introduction of the paper.

11th. Plaintiff then introduced Chester G. Holmes, who being sworn, testifies that he knows Robert B. Alexander and Hines Holt; that they co nstituted a law firm, at or about the time suit was commenced by Carter against Bennett, in Columbus, Georgia. (See exemplification inserted.) That said Alexander was judge soon after in Columbus, Georgia.

Being cross examined as to bonds last introduced, he thinks four of the names on said bonds good for the amount specified by witness, to wit, $15,000, $20,000, or $25,000, and that the other names gave no additional value to the bonds; but cannot say as to the responsibility of the other obligors, as he did not know the extent of their property and liabilities.

12th. Plaintiff next introduced B. L. Turner, who being duly sworn, testifies that he knew Isaac Brown in 1842, and R. C. Adams some time; they were engaged some time in Jackson county, Florida; Adams had about twenty negroes, and a good plantation; Brown was engaged in some business; had about same amount, or may be 25 negroes; knew

Farrior in 1842; did not know his means; thinks Adams's plantation was worth $5,000; thinks Brown's about as valuable; he has heard and believes that Adams's plantation and negroes were mortgaged to the Union Bank, and that he run off his slaves to avoid his indebtedness to said bank, which last statement was ruled out by the court as hearsay.

13th. Walter Thompson, a juror, sworn; boarded at the same house, and next room to Reuben Thornton, in Appalachicola, in winter of 1842 and 1843; heard him several times mention the negroes in controversy; spoke of his trying to sell them to McKay and others, which sale fell through; also about Bennett and Floyd purchasing negroes from him; two or three evenings afterwards, he spoke of a $7,000 note he held, and said it would be very injurious to Bennett, if he did not settle with him, as the property belonged to Warren Jordan, whose wife was his (Thornton's) daughter, from whom he was trying to make the most of it; the said note he mentioned of $7,000, as given by Bennett and Floyd; said he would prosecute Bennett until he did settle this note; witness does not recollect his speaking of making these negroes subject to Warren Jordan's debts; but he said it was a dirty piece of business all round, and he was as deep in it as any body else.

14th. William Foster, another juror, sworn on the part of plaintiff, said Reuben Thornton was with others in a room to which he, witness, was asked to go, and thence to go and aid in taking said negroes in attachment by the marshal, at a late hour of the night; witness refused to go; Thornton went out of the room with the marshal, leaving witness in the room; did not again see Thornton that night.

15th. Patrick Price, sworn as witness for plaintiff, testified that in 1842 he went with others to Bennett's house, between ten and twelve o'clock at night, to arrest the negroes; does not recollect Thornton's being there; the night was dark and the men scattered along Bennett's fence; did not see him; he cannot say that Thornton was or not present; it was very dark; does not known all who was present in the company; collecting at the office after the levy, Thornton was there; he, Thornton, was at Mr. Myers's office when he, Price, and the rest carried the negroes there, which they had taken at Bennett's house and premises; some seven or eight were in the crowd which went to Bennett's; he cannot say whether all was paid or not; he, Price, was paid.

Plaintiff here closed his rebutting testimony.

Defendant, by counsel, then introduced the following rebutting testimony:

1st. Hiram W. Brooks, sworn for defendant; was shown the last bonds introduced; would not consider the parties good securities; thinks Farrior's credit not very good in 1842; his paper was protested that year; his paper (one note) was sent to his, Brook's, house for collection; thinks it was because he could not pay it; knows nothing of his own knowledge why Farrior suffered his note to be protested; does not know but that Farrior had legal defence to notes, but thought not; knows no reason; heard none assigned; thinks that his credit began to

sink for about twelve months before that; may have had other paper of Farrior's sent to his house besides that already mentioned; cannot say positively; thinks there was, but it may have been afterwards; don't know as to the extent of property, responsibility, or liabilities of the other obligors; goes on to review and state what he knows of each who had any thing, as follows:

Roberts, E. C., was responsible for a moderate sum, witness supposes; witness has indulged him in postponing payment of moneys due about and before that time; the necessity of such indulgence would impair a man's responsibility in his estimation; the indulgence given was on paper sent from New York for collection; did not know about Roberts's property and responsibility.

Marvin B. Avery and Wm. H. Stark were here doing a moderate business in 1842; witness supposes they had some 7 or 8 or $10,000 worth of goods in their store, possibly only $5000 or $6000.

W. H. Starke was doing business with Avery; he knows of no other business or property of either of them.

As to R. C. Adams, witness knows nothing of his plantation in Jackson; he was not in credit here; could not have obtained credit for $100 with him. Isaac Brown would not then, or for some time previously, have been taken by witness for $50; he had, previous to 1842, a judgment against said Brown in Jackson county for forty odd dollars, on the execution on which the officer returned no property found; this was in Jackson; the judgment had been since paid from time to time in chips and whetstones, in common parlance, being in freight bills and other little matters with said Brown.

William Hickok was a partner of said Roberts, and witness supposes was on about the same footing of responsibility as Roberts, and like him responsible for a moderate amount.

2d. William G. Porter, sworn by defendant; said he would not take the bonds aforesaid for their specified amount in 1842; had confidence in Roberts, and would have recommended him if desired for credit in the purchase of goods; the obligors, Roberts, Avery, Starke, and Hickok, were in good credit; would have given Roberts open letter of credit; had every confidence in him; Farrior was engaged in Appalachicola as merchant at or about the time; does not know the extent of the responsibility of other obligors.

3d. Defendant then read the following depositions of A. M. Horton and John G. Park.

ARCHIBALD T. BENNETT
vs.
FARISH CARTER. } Trover.

STATE OF FLORIDA,
*Circuit court of Franklin county.*

Interrogatories to be addressed to A. M. Horton and John G. Park, material witnesses for defendant, residing beyond the limits of the State of Florida, to wit, in Baldwin county, Georgia:

1st interrogatory. Were you acquainted with Reuben Thornton, formerly of Hall county, Georgia, and since deceased; if yea, how long did you know him; what were your opportunities of [knowing] his character for truth and veracity; what was his general character for truth and veracity; would you believe him on his oath?

2d interrogatory. What occupation do you follow; do you, or did you, hold any public office in the State of Georgia; and if so, what office, and where? Please answer both interrogatories fully.

R. J. MOSES,
CARAWAY SMITH,
*Attorneys for defendant.*

Let commission issue instanter.

SEMMES.

*Cross interrogatories.*

1st. State when you became acquainted with said Thornton; have you ever resided in the same neighborhood with him; if yea, when, where, and how long; did Thornton ever reside in your county, (Baldwin;) if yea, when, and how long?

2d. Were you acquainted with said Thornton's character for truth and veracity in the county of Hall, where he resided; if yea, how did you acquire your information; did you ever visit Hall county; if yea, how often; how long did you remain, and while there did you or not make any inquiries of the neighbors of Thornton as to his said reputation; if yea, were your inquiries very general; if not, why not; have you not heard his neighbors in and about Gainesville, Hall county, speak disreputably of his character for truth and veracity? State fully. Have you heard them speak on the subject?

3d. Are you in any way related or connected with defendant Carter, or were you related or connected with Thornton?

A. G. SEMMES,
*Plaintiff's attorney.*

GEORGIA,
*Baldwin county.*

By virtue of a commission from the honorable the circuit court of the county of Franklin, Florida, to us directed, we have caused John G. Park and A. M. Horton, the witnesses in said commission named, to come before us, and after being sworn true answers to make to certain interrogatories annexed, depose and answer as follows:

1st interrogatory. John G. Park answers: I was acquainted with said Reuben Thornton; I have known him 20 years or longer, but my acquaintance with him was not an intimate one; in early life I knew him in Green county, where I then resided; I was acquainted with him afterwards when he resided in Hall county; I lived several years in Gwinnett, the adjoining county, but had no immediate intercourse

or intimate association with him; he was an active, energetic man, whose habits and manners rendered him familiarly or generally known through that section of the State; from a passing personal acquaintance, and the reputation given him from his acquaintances, my opinion of his character for truth is formed; his general character, as far as I thus know or heard, was that of an impetuous, violent, and noisy partisan, rash and extravagant in assertions, ready and meddlesome in discussions, and particularly so in political discussions; litigious, conceity, and contentious; he was not generally beloved, yet his truth and veracity in matters of conscience I do not recollect ever hearing questioned or doubted; I should certainly [have] believed him on his oath.

2d interrogatory. I am at present occupied in attending to various matters pertaining to my own affairs; my occupation in early years was the legal profession; for some years I have been connected with, and concerned in, the publication of the Federal Union paper in this place, and until I disposed of my interest in it; I do not now hold any office; I have held public offices in the State of Georgia from 1835 to November, 1843; I held the office of comptroller general in this State.

*Answers to cross interrogatories.*

1st. In my answers to direct interrogatories I have answered as to my acquaintance with said Thornton. I never resided in his immediate neighborhood; when I knew him in Greene county he lived 12 or 15 miles from me; and when I knew him in Hall I lived in Gwinnett, about 25 or 30 miles from him; this was during part of the time from 1822 to 1835; since then, 1835, I have resided in Baldwin, but have still known said Thornton, and frequently seen him here previous to his death.

2d interrogatory. My knowledge of his character in Hall county and elsewhere, and the information I had of him, has been already stated; I visited Hall county frequently, at least twice a year, when I attended the courts there, and generally remained during the week, or most of it, of each court; I have not, however, been in that county in the last 8 or 10 years; I had, during my business in that county, no occasion to make inquiries respecting Thornton's reputation of his neighbors, and do not think I ever did so; I have heard his neighbors and acquaintances speak disreputably of him, but I do not remember ever hearing his credibility on oath questioned.

3d interrogatory. I am not connected with or related to Carter, nor was I to Thornton, in any way.

JNO. G. PARK.

Answered, sworn to, and subscribed before us, this 2d day of February, 1847.

CHARLES B. HUSEN, *Com'r*, [SEAL.]
TH. M. GRIFFIN, *Com'r*. [SEAL.]

1st interrogatory. A. M. Horton answers: I was acquainted with Thornton; I knew him from 1840 to the time he died; my opportunity

of judging of his character for truth was limited; his general character for truth and veracity I never heard questioned; I would have believed him on his oath.

2d interrogatory. He answers: I have been engaged for some time past in the transaction of business as an agent in the various departments of the Government for those living at a distance; I held the office of surveyor general of the State of Georgia from 1839 until the winter of 1843.

*Answers to cross interrogatories.*

1st cross interrogatory. A. M. Horton answers: I have in the foregoing answered where I became acquainted with Thornton; I have never resided in the same neighborhood with him; he never resided in Baldwin county that I know of.

2d cross interrogatory. He answers: Never having resided in Hall county, I do not know what was his character there for truth and veracity; I never visited Hall county; I have not heard his neighbors in these counties speak disreputably of his character for truth and veracity, nor have I heard them speak on the subject; I am not related or connected with either Carter or Thornton.

A. M. HORTON.

Answered, sworn to, and subscribed before us, this 2d day of February, 1847.

CHARLES B. HUSEN, [L. S.]
TH. M. GRIFFIN, [L. S.]
*Commissioners.*

4th. He next introduced and read the following depositions of Nathan C. Barnett and Walter H. Mitchell:

Interrogatories to be prop ounded to Nathan C. Barnett and Walter H. Mitchell, material witnesses for defendant, residing beyond the limits of the State of Florida, to witness in Baldwin county, Georgia.

1st. Were you acquainted with Reuben Thornton, formerly of Hall county, Georgia, and since deceased? If yea, how long did you know him; what were your opportunities of judging of his character for truth and veracity; what was his general character for truth and veracity; would you believe him on his oath?

2d. What occupation do you follow; do you hold any public office in the State of Georgia, and if so, what office? Please answer both interrogatories fully.

R. J. MOSES,
CARAWAY SMITH,
*Attorneys for defendant.*

Let commission issue instanter.

SEMMES.

*Cross interrogatories.*

1st. Please state when you became acquainted with said Thornton. Did he ever reside in Baldwin county; if yea, when; did you ever reside in said county with him?

2d. Were you acquainted with the reputation of the said Thornton for truth and veracity, in the county of Hall, where he resided? If yea, how did you acquire the information? Did you ever visit Hall county? How often; how long did you remain? And while there, did you or did you not make any inquiries of the residents of that county as to the reputation of said Thornton? If yea, were your inquiries very general? If not, why not?

3d. How far is Gainesville, in Hall county, where Thornton resided, from Milledgeville, Baldwin county, where you reside?

4th. Are you in any way connected with Carter, defendant, or were you in any way related or connected with Thornton? State fully.

A. G. SEMMES,
*Plaintiff's attorney.*

STATE OF GEORGIA,
*Baldwin county, ss.*

By virtue of a commission from the honorable the circuit court of the county of Franklin, Florida, to us directed, we have caused Nathan C. Barnett, the first witness in said commission named, to come before us, and after being duly sworn true answers to make to certain interrogatories annexed, deposeth and answers as follows:

1st interrogatory. Witness answers, I was acquainted with Reuben Thornton, formerly of Hall county, Georgia. My first acquaintance with the said Thornton was about the year eighteen hundred and twenty. I occasionally met with him from that time until, perhaps, some three or four years previous to his removal from the county of Hall, and my acquaintance with him was sufficient to enable me to form an opinion of his character; which opinion was, that he was a man of truth and veracity in matters of a serious nature. I should have no hesitancy in believing him on his oath.

2d He answers, I am the secretary of state for the State of Georgia, to which office I was elected by the legislature in eighteen hundred and forty-three, and again in eighteen hundred and forty-five.

*Answers to cross interrogatories.*

1st cross interrogatory. He answers, I became acquainted with said Thornton, as above answered, about the year eighteen hundred and twenty. He was then residing, to the best of my recollection, in the county of Greene. If he ever resided in the county of Baldwin, it was previous to my acquaintance with him, or, if since, but a very short time. I do not remember that we ever resided in the same county, but we did reside in adjoining counties, to wit, in Greene and Oglethorpe, and Greene and Clarke.

2d cross interrogatory. He answers, I cannot say that I was particularly acquainted with the reputation of said Thornton for truth and veracity, in the county of Hall, not having visited the county more than twice or thrice at most, during his residence there, and on but one

occasion made any stop, and that was but short. I made no inquiry relative to the character of said Thornton.

3d cross interrogatory. He answers, the distance between Gainesville, Hall county, and Milledgeville, Baldwin county, is said to be one hundred and eighteen miles.

4th cross interrogatory. He answers, I am in no way connected with defendant, Carter, either by relationship or interest. I was not connected with said Thornton myself, but I believe there was a distant family connexion by intermarriage.

N. C. BARNETT.

Answered, sworn to, and subscribed, this February 4th, 1847.

A. M. NESBET, *Com'r.* [SEAL.]
D. E. BOTHWELL, *Com'r.* [SEAL.]

STATE OF FLORIDA, *Franklin county.*

By virtue of a commission from the honorable the circuit court of the county and State aforesaid, to us directed, we have caused Walter H. Mitchell, the witness in said commission named, to come before us, and after being duly sworn true answers to make to certain interrogatories annexed, deposeth and answers as follows:

1st interrogatory. Witness answers, he knew Reuben Thornton, now deceased, formerly of Gainesville, Hall county. I have known said Thornton from the year 1834 till his death; I have stopped at his hotel in said village; my opportunities for knowing him were not as good as if I had lived in the same county, but I have had various transactions in the capacity of public offices; I have always looked upon him as an honest but unfortunate man, and would, without any hesitation, believe him on his oath.

2d interrogatory. Witness answers, I am a public officer of the State of Georgia; I am treasurer of said State.

*Answers to cross interrogatories.*

1st cross interrogatory. Witness answers, I first became acquainted with Reuben Thornton in the summer of 1834; he never to my knowledge lived in Baldwin county; I never did reside in this county with him.

2d cross interrogatory. Witness answers, I knew Thornton in the county of Hall, and I always looked upon him as a man of truth and veracity; I do not know his character in the county of Hall; I do not remember to ever have heard it canvassed either for good or evil. I have visited Hall county frequently; I cannot say how often; I have remained some two to three days at a time; I never made any inquiry as to the reputation of said Thornton.

3d cross interrogatory. Witness answers, I suppose the distance to be about 120 miles.

4th cross interrogatory. Witness answers, I am not connected in

any way with Col. Farish Carter, neither am I with Reuben Thornton, deceased.

WALTER H. MITCHELL.

Answered, sworn to, and subscribed before us, this February 4th, 1847.

A. M. NESBET, *Com'r*, [SEAL.]
D. E. BOTHWELL, *Com'r*. [SEAL.]

5th. He next introduced H. R. Taylor, who testified that he would not take said parties on said bonds last mentioned, either individually or collectively, in any matter of his for $33,000 or $30,000, but did not, nor does he now, know the extent of the responsibility of the obligors. Roberts, Allen & Co., of which Hickok and Roberts are partners; Avery, Stark, and Farrior were engaged as merchants in Appalachicola at dates of bonds; Farrior that year returned to the city tax assessor $24,000 amount of sales that year, as appears by tax book now shown in court, besides negroes, &c.; little or no property of any of them appeared on tax books which he showed.

6th. Benjamin S. Hawley testified, that after the sale of said negroes by the marshal, Bennett threatened resistance to their delivery by an armed force, and the marshal, his brother Hezekiah, now deceased, had to call out an armed force of citizens to enable him to deliver the negroes on board a steamboat, Bennett and several others being near by with guns, &c., in their hands.

7th. Defendant then read the following deposition of Jeptha C. Harris:

*Interrogatories to be propounded to Harris, a material witness for defendant, resident in the State of Georgia.*

1st interrogatory. Do you know the parties?

2d. Do you know one Warren Jordan, late of Georgia, (since deceased?) If yea, state whether the said Jordan did not employ you to remove certain negroes from the State of Georgia, to be carried to Texas, or elsewhere.

3d interrogatory. Did you undertake to remove said negroes? If yea, were they removed secretly, to avoid the payment of any debt or mortgage? To what point, if any, in Florida, did you carry them; on whose boat; was the plaintiff in your company; did he know anything of the circumstances under which the negroes were removed? If yea, what did he know?

4th interrogatory. Did you arrive in Appalachicola with said slaves; were they attached? If yea, by whom? Did you employ counsel? If yea, who? By whose advice? Did you change your counsel? If yea, by whose advice? And say who you employed first, and who you employed afterwards. State, as nearly as you can, the advice given to you by each of your lawyers.

5th. Did you consult with Davis and Floyd, at Appalachicola? If yea, did they advise you differently from your first counsel? State in what respect. Whether Bennett knew the advice given you by Davis and Floyd, and whether you adopted the advice given?

6th. State whether, after consulting with Davis and Floyd, you did or did not return to Georgia in company with plaintiff, and say what occurred in the presence of plaintiff, between yourself and Warren Jordan, in regard to the negroes above referred to.

7th. State when and how Reuben Thornton became interested in the negroes. State all that occurred about the sale of said negroes from Warren Jordan to Thornton, if any such sale occurred. And be particular to designate what occurrences took place in the presence of, or with the knowledge of, Bennett, and designate such as he was ignorant of, and spare no pains in relating all that Bennett said to you, or Warren Jordan, or R. Thornton, in relation to these negroes, and the attachment then pending.

8th. State whether you returned to Appalachicola. If yea, in whose company? State what was done in regard to the negroes after your return. State whether the negroes were sold. If yea, state to whom they were sold; who was interested in the purchase; what induced the sale, and be particular to relate all that occurred with plaintiff in regard to these negroes, up to the time of their final sale.

9th. State as nearly as you can the names of the negroes brought by you to Appalachicola; whether they were all or part of those attached; whether they were all, or what part of them, under mortgage to the Georgia Railroad and Banking Company; whether they were all, or what part of them, sold in Appalachicola; by whom, and to whom, and if you were present at the sale. State any circumstances that occurred at the time in regard to the title to said slaves.

10th. State if you know what became of these negroes after the sale. Were they all or any part of them removed from Florida? If yea, how many; name them; how long after the sale were they removed; and state whether Bennett, Floyd, or Davis, went with them.

11th. Were any of the said slaves afterwards attached by the Georgia Railroad and Banking Company, or by the defendant? If yea, name them; and state if you know what became of them.

12th. Were there among the negroes mortgaged to the Georgia Railroad and Banking Company, removed by you to Florida, the following, to wit: Jeffe, Isaac, Rica, Allen, Tom, Cato, Charles, Elias, John, Joe, Sam, Amos, Patsey and child, Pink or Judy, and two children, Charles and Henry, Dinah and Camilla, Fanny, Emeline, Andrew, Albert, Tom, (old man,) Sarah, his wife, Irene, Antoinette, Clarissa, Camilla, Jane and child?

13th interrogatory. If you answer the above affirmatively, state if you can what became of the above negroes.

14th. State anything you know else beneficial to defendant Carter?

R. J. MOSES and
J. C. SMITH,
*Defendant's Attorneys.*

*Cross interrogatories for Jeptha C. Harris, esq., witness examined on the part of defendant.*

1st. Please state whether plaintiff and yourself are not on unfriendly terms. Have you not refused to answer interrogatories in his behalf, in relation to the matters referred to in direct interrogatories, and in controversy between Reuben Thornton and plaintiff?

2d. Please state all that you know that will benefit the plaintiff.

Plaintiff's counsel objects to the 9th direct interrogatory, and any answer of witness, as to whether these negroes were under mortgage or not.

Plaintiff's counsel also objects to the interrogatory (13) containing the names of these negroes, as a leading question.

A. G. SEMMES,
*Plaintiff's attorney.*

1st interrogatory. He answers, that he knows one of the parties.

2d interrogatory. He answers, that he did know one Warren Jordan, late of the State of Georgia, and was employed by said Jordan to remove certain negroes.

3d interrogatory. He answers, that he did undertake to remove said negroes, and that they were delivered to him by Warren Jordan's overseer in the night; but he was previously informed by Jordan that the object of removing said slaves was not to avoid the payment of his debts, but for the purpose of enabling him to work out of debt without sacrificing his property, and that he did not know that they were mortgaged at the time they were placed in his charge. He carried them to Appalachicola in the steamer called the Louisa, said to belong to A. T. Bennett, or Smith and Bennett; A. T. Bennett was not in company at the time. He does not know that A. T. Bennett knew the circumstances under which the negroes were removed, until after they arrived at Appalachicola.

4th interrogatory. He answers, that he did arrive at Appalachicola with said slaves, and that they were attached, he thinks, at the instance of John Watson, under an attachment against one Hodges; he first employed Esquire Moses, and afterwards Davis and Floyd, all by the advice of A. T. Bennett, who offered his services to render him any assistance in his power. Bennett first introduced him to Esquire Moses, and afterwards to Davis and Floyd, and advised him to change his counsel, manifesting a deep interest in his success in relieving the negroes. He states that it is impossible for him to relate all that his attorneys advised; but remembers that Davis and Floyd advised him to return to Georgia, and get a different power of attorney, in order to enable him to defend the attachment, and he was told by them that it required a resident of the then Territory to witness the said power of attorney, and A. T. Bennett offered to return to Georgia with him.

5th interrogatory. He answers, that he did consult with Davis and Floyd, and that A. T. Bennett was present during most, if not all, the consultations.

1944

6th interrogatory. He answers, that, after consulting with Davis and Floyd, he did return to Georgia, and that plaintiff accompanied him for the purpose before mentioned. When he arrived at Col. Jordan's, plaintiff was in company with him, and present when he informed Jordan that the negroes were attached, and that he had returned to get a different power of attorney, to enable him to defend the attachment.

7th interrogatory. He answers, that when he and plaintiff arrived at Col. Jordan's, they found Reuben Thornton there, and after some consultation between Jordan and Thornton, Thornton remarked that he had purchased the negroes, and drew up a bill of sale, which Jordan signed, and witness and plaintiff witnessed. Thornton handed Jordan a roll of money, which was afterwards handed back to him. Plaintiff, Thornton, and witness, then left for Appalachicola. Bennett manifested to witness and to Warren Jordan very great anxiety that the negroes should be released, and offered to stand security for witness on a replevying bond, or do any thing else in his power to get the negroes off from Appalachicola.

8th interrogatory. He answers, that he did return to Appalachicola in company with A. T. Bennett and Reuben Thornton, and that after their arrival Thornton made some efforts to get the negroes released and failed. Thornton afterwards informed witness that he was about selling the negroes. Thornton remarked that, by selling the negroes, he would save something for Mrs. Jordan and her children, but would sacrifice his honor. Thornton then sold the negroes to A. T. Bennett and R. J. Floyd, and witness understood that Mr. Farrior also had interest in the purchase; the last man he is not certain that he has correct; he thinks it was Ferro, or Farrior. Thornton informed witness that the reason for his selling the negroes was, that he could not get them replevied, before claims against Jordan would arrive at Appalachicola that would hold or sell them. Plaintiff informed witness on his return to Appalachicola that Thornton had told him that the negroes were mortgaged, which was witness's first knowledge of the fact; Thornton also afterwards told him the same.

9th. He answers, that he took down the names of the negroes in a memorandom book, and that the foregoing is a list of the same, viz., Old Tom, Dick, Allen, Cato, Charles, Gilbert, Amos, Merida, Elias, Jack, Abram, Major, Ben, black Albert, Sam, Jeffrey, Rucker, Moses, Americus, Davy, yellow Albert, Billy, Isaac, Coon, Joe, men; Grandison, Andrew, Virgil, Washington, Tom, Marcus, Clem, William, Monroe, Wylie, Charles, Simon, boys; old Sarah, Martha and child, Patsey and child, Jane and child, Susan and child, Nancy and child, Ginny and child, Dinah and child, Harriet and child, Fada, Maria, Milly, Rachael, Penny, Sally, Nancy, Charlotte, Caroline, Antoinette, Miller, Francis, Louisa, Lucinda, Ellen, Sarah, Amanda, Fanny, Avarilla, Mary, Cresa, Olly, Irene, Clarissa. All of the above named negroes were attached, except Davy, and a man and woman given for transporting them to Appalachicola. Witness does not know what part of the negroes were mortgaged to the Georgia Railroad; they

were all sold in Appalachicola, except the three above mentioned. Witness was present at the sale of the negroes, and understood Thornton to say that he sold his interest in the negroes only, and that they were still subject for the debts of Warren Jordan.

10th interrogatory. He answers, that he saw part of the negroes (he does not know how many) put on board a vessel, which was towed out into the bay by a steamboat. He does not know whether any of them were removed out of Florida. The negroes that he saw put on board [of] vessel, were taken from the jail to the wharf at Appalachicola, a short time after the sale made by Thornton to Bennett and others; Bennett, and he thinks Floyd, went off with them.

11th interrogatory. He answers, that he does not know.

12th interrogatory. He answers, that he does not know what negroes were mortgaged to the Georgia Railroad, and that he has given all the names as he received them.

13th interrogatory. He states that he has no answer.

14th interrogatory. He answers, that he has stated all that he recollects that could benefit the defendant.

*Cross interrogatories.*

1st cross interrogatory. He answers, that himself and plaintiff are not upon intimate terms, but that he could not be influenced to do plaintiff injustice, from the fact that he did not like him. He also answers, that he has refused to answer interrogatories in the controversy relative to the aforesaid negroes.

2d cross interrogatory. He answers, that he knows nothing more than he has already stated that could benefit either party.

J. C. HARRIS.

Answered, subscribed, and sworn to before us, the 7th day of January, 1847.

EDMUND RICHARDSON, [SEAL.]
JAMES H. NEWMAN, [SEAL.]
*Commissioners.*

*Defendant's confirming and rebutting evidence continued.*

8th. Defendant next read the following record of the proceedings had in Georgia between Peninah Thomas and Farish Carter, touching part of said lands in the mortgage mentioned, and the final decree therein, which was read, subject to plaintiff's objections to its being read as evidence.

Baker superior court, June term, 1844.

PENINAH W. THOMAS, complainant,
vs.
FARISH CARTER, defendant.
} Bill for discovery, relief, and injunction.

GEORGIA, *Baker county*.

To the honorable William Taylor, judge of the superior courts of the southwestern circuit of said State, and by virtue thereof exercising chancery jurisdiction.

Respectfully complaining, showeth unto your honor, your oratrix,

Peninah W. Thomas, that heretofore, to wit, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and forty, Warren Jordan and Rebecca Thornton, then of the county of Hall, in said State, made and delivered to your oratrix their joint and several promissory note, bearing date as aforesaid, whereby they, or either of them, promised to pay your oratrix or bearer the sum of eight thousand seven hundred and forty-three dollars and seventy-three cents, on or before the first day of March, eighteen hundred and forty-one. Your oratrix further showeth unto your honor, that for the better securing the payment of the aforesaid promissory note, the said Warren Jordan, on the day and year first aforesaid, executed and delivered to your oratrix his certain deed of mortgage on the following lots or parcels of land, viz: Lot of land No. 179, number one hundred and seventy-nine; lot of land No. 180, number one hundred and eighty; lot of land No. 224, number two hundred and twenty-four; all lying and being in the second district of, (originally Early,) now Baker county, in said State. Also lot of land No. 181, number one hundred and eighty-one, and situate in the third district of, originally Early, now Baker county, each of said lots containing two hundred and fifty acres, making the whole number of acres included in the mortgage one thousand; all of which will more fully appear by reference to said deed of mortgage, a copy of which is hereto annexed, marked exhibit A, and which your oratrix prays to have taken and considered as part of this her bill, with leave to refer thereto as often as may be necessary.

Your oratrix further states to your honor, that at the last term of the superior court of said county of Baker, her said debt remaining still due and unpaid, she applied for, and obtained through, her attorney, a rule absolute for the foreclosure of said mortgage on said four lots of land for the principal and interest of said promissory note, and that an execution has been duly issued thereon, as will more fully appear by reference to the record of the proceedings in said case.

Your oratrix further states to your honor, that the said Warren Jordan had executed to the Georgia Railroad and Banking Company a mortgage of prior date to that given to your oratrix, to secure a debt of some fifteen thousand six hundred and twenty-seven dollars, or some other large sum due to that corporation, which instrument embraced a large amount of other and valuable property, as well as the four lots of land contained in your oratrix's mortgage; all of which will more fully appear by reference to the said railroad mortgage, a copy of which is hereto annexed, marked exhibit B, and which is prayed to be taken and considered as a part of this bill, with leave of reference thereto as often as may be necessary.

This latter mortgage, and the debt on which it is founded, has been transferred to Farish Carter, of the county of Baldwin, and State aforesaid, and the same was foreclosed by him at the last term of Baker superior court, and the fi. fa. issuing thereon has been levied, for February sale, on three of the lots mortgaged to your ora-

trix, viz, lots 179, (one hundred and seventy-nine,) 180, (one hundred and eighty,) 181, (one hundred and eighty-one.)

Your oratrix further showeth unto your honor, that she has sued for and obtained a general judgment at common law for her said mortgage debt, as will appear by the execution issuing thereon, a copy of which is hereto annexed, marked exhibit C, and which your oratrix prays to have taken and considered as a part [of] this her bill, with reference thereto as often as may be necessary.

Further complaining your oratrix showeth unto your honor, that the said Farish Carter, since taking the assignment of said railroad debt and mortgage, as she has understood and believes, has realized some ten thousand dollars, or other large sums of money, from the property of the said Warren Jordan, included in the mortgage of the said Farish Carter, and which ought in equity to be applied in payment of his said demand, and for which no credit has been allowed.

Your oratrix further represents to your honor, that a house and lot in the town of Gainsville, in said State, included in said railroad mortgage, and of great value, to wit, the value of five thousand dollars, or some other large sum, has been sold by the sheriff of Hall county by a common law execution, at the instance of the said Farish Carter, or some other creditor of the said Warren Jordan, subject to the lien of the said railroad mortgage, and that the same was bought in by the said Farish Carter, or some other person for him, for an inconsiderable sum, owing to the said encumbrance.

She further represents to your honor, that besides the land in Baker, it will be seen, by reference to said railroad mortgage, that there is other property subject to the same, and which, when sold, will more than pay off and discharge any remaining balance that may be owing upon the said railroad mortgage.

But now so it is, may it please your honor, that the said Farish Carter, combining and confederating together with the said Warren Jordan, and to and with divers other persons, at present unknown to your oratrix, whose names when discovered your oratrix prays may herein be inserted, and they made parties defendant hereto, with proper and apt words to charge them; and contriving how to injure and oppress your oratrix in the premises, pretends that all the money that he has realized from the said Warren Jordan's property has been applied to other demands, which he held against the said Warren Jordan; whereas your oratrix charges the contrary thereof to be the truth, and insists that all the money received by the said Farish Carter ought first to go to the extinguishment of his mortgage debt, and that if he held any other, it was claims that he had bought up on speculation, and with a view to defeat the recovery of your oratrix's just rights.

She moreover charges, that one of the pretended claims which she has understood is brought forward by the said Farish Carter, is for a debt due in Jasper county, on which the said Warren Jordan was security only, and for the payment of which the principal is abundantly responsible; all of which actings, and doings, and pretences, are contrary

to equity and good conscience, and tend to the manifest wrong and injury of your oratrix in the premises.

In tender consideration whereof, and for as much as your oratrix is remediless in the premises, at and by the direct and strict rules of the common law, and cannot have adequate relief, save in a court of equity, where matters of this and like nature are properly cognizable and relievable, to the end that the said Farish Carter may, upon his corporal oath, full, true, direct, and perfect answers make, to all and singular the matters herein before stated and charged, as fully and particularly as if the same were hereinafter repeated, and he thereto distinctly interrogated, and that not only to the best of his knowledge and remembrance, but also as to the best of his information, hearsay, and belief, and more especially that he may answer and set forth whether or not the said Warren Jordan did not make and deliver to your oratrix the mortgage herein before described, and a copy of which is annexed to her bill, and on the lots of land therein set forth. Whether the same has not been foreclosed? Whether the said Warren Jordan did not make and deliver to the Georgia Railroad and Banking Company another mortgage of prior date to that given to your oratrix; and whether exhibit B is not a true copy of said instrument? Whether the same has not been transferred to the said Farish Carter, and by him foreclosed? Whether an execution has not issued thereon, and been levied for next February sale, on three of the lots mortgaged to your oratrix, to wit, lots No. 179, (one hundred and seventy-nine,) No. 180, (one hundred and eighty,) and No. 181, (one hundred and eighty-one?) Whether your oratrix has not sued for and obtained a general judgment at common law upon the debt embraced in her mortgage, and whether exhibit C is not a correct copy of the execution issued thereon? Whether, since the transfer of the said railroad mortgage to the said Farish Carter, he has not received ten thousand dollars, or some other large sum, the proceeds of the property, or a part thereof, contained in his mortgage, and state the amount, and in what way it came into his hands? Whether a house and lot in Gainesville, in the said State, or some other property, and what, included in the said railroad mortgage, and of the value of five thousand dollars, or some other large sum, and state its worth, has not been sold under common law process, at the instance of said Farish Carter, or some other creditor of said Warren Jordan, and subject to the lien of said railroad mortgage; and was not the same bought in for an inconsiderable sum, owing to the said encumbrance, and state by whom the same was purchased, and at what price. State whether all the property embraced in the said railroad mortgage has been sold under said mortgage, other than that now levied on, and state the value of that remaining undisposed of.

And that the said Farish Carter may answer the premises, and that he may be compelled to credit his mortgage debt with whatever sum of money he has received, which ought equitably to be applied thereto, and that he may be compelled to foreclose his said mortgage on all the property embraced therein, other than that contained in the mortgage

of your oratrix, and sell the same, and apply the proceeds, before interfering with the lots of land mortgaged to your oratrix; and that in the mean time an injunction may be awarded by this honorable court to restrain the said Farish Carter, his agent and attorneys, as well as the sheriff of Baker county, from proceeding with the sale now advertised of the said lots of land in Baker county; and for further relief, may it please your honor to grant unto your oratrix the State's writ of subpœna, to be directed to said Farish Carter, thereby commanding him, at a certain day and under a certain pain therein to be inserted, personally to be and appear before your honor, in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree therein, as to your honor shall seem agreeable to equity and good conscience; and your oratrix will ever pray, &c.

JO$EPH HENRY LUMPKIN,
*Solicitor for complainant.*

STATE OF GEORGIA, *Clarke county.*

Personally appeared before me, Samuel Frost, a justice of the peace, in and for the county of Clarke and State aforesaid, Penenah W. Thomas, who, being duly sworn, deposeth and saith, that the facts set forth in the foregoing bill are true, so far as they came within her own knowledge, or concern her own acts and deeds; and she believes them to be true, so far as they came within the knowledge, or concern the acts and deeds, of others.

PENINAH W. THOMAS.

Sworn and subscribed before me, this thirtieth day of December, 1843.

SAMUEL FROST, *J. P.*

*Exhibit A.*

GEORGIA, *Hall county.*

This indenture, made this twenty-second day of February, in the year of our Lord one thousand eight hundred and forty, between Warren Jordan, of Gainesville, in the county of Hall and State of Georgia, of the one part, and Peninah W. Thomas, of Athens, in the county of Clarke and State aforesaid, of the other part, witnesseth: That the said Warren Jordan and one Reuben Thornton have this day made and delivered to the said Peninah W. Thomas their certain joint and several promissory note in writing, subscribed with their own proper hands, and bearing even date with these presents, whereby the said Warren Jordan and Reuben Thornton, or either of them, have promised to pay the said Peninah W. Thomas, or bearer, the sum of eight thousand seven hundred and forty-three dollars and seventy-three cents, on or before the first day of March, eighteen hundred and forty-one, for value received.

Now, for and in consideration of the sum of ten dollars, by the said

Peninah W. Thomas to the said Warren Jordan in hand paid, the receipt whereof is hereby acknowledged, as well as for the better securing the payment of the aforesaid promissory note, the said Warren Jordan hath hereby granted, bargained, sold, and conveyed, and doth by these presents grant, bargain, sell, and convey, unto the said Peninah W. Thomas, her heirs and assigns, the following lots or parcels of land, viz:

Lot of land No. 179, (one hundred and seventy-nine;)

Lot of land No. 180, (one hundred and eighty;)

Lot of land No. 224, (two hundred and twenty-four;) all lying and being in the second district of originally Early county, now Baker county, in said State. Also lot of land No. 181, (one hundred and eighty-one,) lying and being in the third district of originally Early county, now Baker county, each of said four lots containing two hundred and fifty acres, more or less; making the whole number of acres of land hereby mortgaged one thousand acres, more or less, and to which four several tracts of land the said Warren Jordan has a regular chain of titles.

To have and to hold said bargained premises to the said Peninah W. Thomas, her heirs and assigns, to her and their own proper use, benefit, and behoof, in fee simple forever; and the said Warren Jordan, for himself, his heirs, executors, and administrators, the said bargained premises unto the said Peninah W. Thomas, her heirs and assigns, will warrant and forever defend, against the claim of himself and his heirs, and against the claims of all other persons whatever: Provided, nevertheless, that if the said Warren Jordan, his heirs, executors, and administrators, shall and do well and truly pay, or cause to be paid, unto the said Peninah W. Thomas, her heirs and assigns, the aforementioned sum of eight thousand seven hundred and forty-three dollars and seventy-three cents, on the day and time mentioned and appointed for the payment thereof in the said promissory note mentioned, according to the tenor of said note, then and from thenceforth, as well this present indenture and the right to the property thereby conveyed, as the said promissory note, shall cease, determine, and be void to all intents and purposes.

In testimony whereof the said Warren Jordan hath hereunto set his hand and seal, the day and year first above written.

WARREN JORDAN. [L. S.]

Signed, sealed, and delivered, in the presence of—
GEORGE H. BERCK, *J. P.*
WILLIAM L. MITCHEL, *Notary Public.*

GEORGIA, *Baker county.*

Clerk's office of the superior court.

Registered in book 7, pages 285, 286, and 287, this 7th day of April, 1840.

SETH C. STEVENS, *Clerk.*

*Exhibit B.*

GEORGIA, *Hall county.*

Whereas an arrangement was entered into on the twenty-eighth day of December, in the year eighteen hundred and thirty-eight, by and between Warren Jordan, of said county, and the Georgia Railroad and Banking Company, whereby a loan of twenty-five thousand dollars was extended by the said company to the said Warren on his note for that amount, dated the day and year aforesaid, payable one hundred and eighty-four days after date, to the order of and endorsed by Reuben Thornton, of said county, and secured by a mortgage of even date on the property hereinafter described, with the exception of lot No. 285, in the 2d district of Baker county, in this State, containing two hundred and fifty acres of land; which said note it was agreed should be renewable every six months after the first day of January, eighteen hundred and thirty-nine, so as to be made to fall due on the first days of July and January, or on the first discount days of said bank succeeding the said first days of July and January, in each year, for five successive years, from and after the said first day of January, eighteen hundred and thirty-nine, subject to a reduction of ten per cent. at each renewal, or twenty per cent. annually, as the said bank might thereafter require; the whole amount of the twenty-five thousand dollars to be paid by the expiration or within the limits of five years, as aforesaid, from the said first day of January, eighteen hundred and thirty-nine, together with all interest and expenses that might be required by said bank at each renewal, in accordance with its rules and regulations, not to exceed the rate of eight per cent. per annum. And whereas, in accordance with the said arrangement, the said Warren renewed his said note so given as aforesaid for twenty-five thousand dollars, by giving a new one with the same endorser to the said Georgia Railroad and Banking Company, on the first day of July, eighteen hundred and thirty-nine, payable six months after date, for twenty-two thousand five hundred dollars, and paying the reduction and interest required by the bank. And whereas, it being now discovered that there has been an omission to record the said mortgage, and the time allowed by the statute of the State for that purpose has elapsed, the parties have agreed to remedy the omission by the execution of a new mortgage of the same property with the addition aforesaid, and the due record thereof for the security of the said note for twenty-two thousand five hundred dollars now remaining in the said bank, and of all other notes that may be given in renewal thereof or of each other, and of the interest and costs that may accrue on the same: To these ends, therefore, this indenture, made and entered into this thirteenth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, by and between the said Warren Jordan, of the first part, and the said Georgia Railroad and Banking Company, of the second part, witnesseth, Warren Jordan, for and in consideration of the premises, and the sum of ten dollars to him in hand paid by the said Georgia Railroad

and Banking Company at the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained, and sold, and by these presents give, grant, bargain, and sell, to the said Georgia Railroad and Banking Company, the following land, town lots, and negroes, to wit: Fifteen hundred acres of land immediately adjoining the town of Gainesville, in the said county of Hall, in the State aforesaid, comprising lots number 149, one hundred and forty-nine, 150, one hundred and fifty, 152, one hundred and fifty-two, 153, one hundred and fifty-three, 167, one hundred and sixty-seven, 168, one hundred and sixty-eight, and parts of lots numbers 154, one hundred and fifty-four, and 136, one hundred and thirty-six, forming one body, lying on both sides of Flat creek, adjoining the lands of Cooper, Daniel Mitchell, and others, together with all the reversions, buildings thereon, comprising six dwelling-houses and a great variety of other houses necessary for the different lots and settlements thereon, which said tract of land is the one whereon the said Warren Jordan now resides. Also the following improved lots in the town of Gainesville, to wit: Parts of lots numbers 11, eleven, 12, twelve, with the storehouse and improvements thereon, fronting on the public square, and adjoining property belonging to Rivers on the north, and Brown on the south, lots No. 28, twenty-eight, with the buildings and improvements thereon. Also three thousand acres of land in the second and third districts of originally Early, now Baker county, in said State, comprising six lots on the Colawahee creek, known as numbers 271, two hundred and seventy-one, 272, two hundred and seventy-two, 273, two hundred and seventy-three, 274, two hundred and seventy-four, 275, two hundred and seventy-five, and two hundred and eighty-six, adjoining Denard, John Taylor, and others. Also on Chickasawatchie creek 180, one hundred and eighty, 179, one hundred and seventy-nine, 219, two hundred and nineteen, 220, two hundred and twenty, 224, two hundred and twenty-four, all in the second district, and 181, one hundred and eighty-one, in the third district as aforesaid, which said tracts of land were conveyed by Jerry Cowles to the said Warren Jordan. Also lot number 285, two hundred and eighty-five, in the second district of the said county of Baker, containing two hundred and fifty acres. Also the following negroes, to wit: Davy, carriage driver, Albert, house servant, Richard, shoemaker, Cato, Ben, Coon, Charles, Billy, Tom, Abram, Allen, Henry, Jerry, wagoner, Jeffrey, Horace, Jack, Tom, superior house carpenter, Amos and Moses, good house carpenters, and Lane, making twenty-four fellows. Also, Isaac, Americus, Elias, Starling, Tom, and Rica, six lads, nearly grown; Susan and her eight children, as follows, Maria, grown, Amelia, nearly grown, Rica, plough-boy, Edenboro, Charlotte, Pompey, Sarah, and William; Narcissa and her four children, Washington, Oliver, Darby, and Clement; Rachel and her two children, Abby and Grandison; Martha, grown woman; Daphney and Nancy, two women; Jenny and her child, Caroline; Dinah

and her four children, Grace, Antoinette, Marcus, and Avarilla; Penny, woman; Polly and her child; Rose and her seven children, Clarissa, Joe, Emeline, Camilla, Ellen, Araminta, and Angeline; two Sarahs, women; Patsey, valuable cook; Mary, house servant and seamstress; Sally, cook and washer; Fada, Roda, two women; Harriet and her two children, Francis and Munroe; Cilla and her child, Major; Gilbert, Serrel, and Andrew, three lads; together with all and singular the rights, members, and appurtenances to the said lands belonging or in any wise appertaining; to have and to hold all the above bargained property to the only proper use, benefit, and behoof of the said Georgia Railroad and Banking Company, their successors and assigns forever, in fee simple. And the said Warren for himself, his heirs, executors, and administrators, the above bargained property unto the said Georgia Railroad and Banking Company will forever warrant and defend against the claims of all persons whomsoever: Provided, nevertheless, that if the said Warren Jordan, his heirs, executors, or administrators, shall well and truly attend to the renewal of the said note for twenty-two thousand five hundred dollars now running in the said Georgia Railroad and Banking Company, at their office or banking house in Athens, and of all notes that may be given in renewal thereof and of each other, and punctually pay reductions and discounts which shall become due thereon according to the true intent and meaning of these presents, so as to complete the payment of the whole twenty-five thousand dollars originally borrowed by the said Warren from the said company, within the five years, as above specified, from the said first day of January, eighteen hundred and thirty-nine, together with all interests, costs, and charges of any kind that may arise from any defalcation so to do, or cause the same to be done, then and from thenceforth, as well this indenture and the right of property thereby conveyed, as the said note now running as aforesaid, and all others given in renewal thereof or of each other, shall cease, determine, and be void to all intents and purposes; but in default thereof, according to the plain tenor and meaning of these presents, the said Georgia Railroad and Banking Company shall have the right, and is hereby vested with the power, of foreclosing this mortgage according to law, and to sell so much of the property hereby above conveyed as will satisfy all legal demands of the Georgia Railroad and Banking Company against the said Warren Jordan, growing out of his defalcation or failure to comply with the condition and requirements of this mortgage; and, after paying all the principal, interest, and charges on the same, that he, the said Warren, may by law be held liable and responsible for, the balance, if any, shall be paid over to the said Warren or to his legal representative, and the balance of the property, not sold, shall likewise be immediately, to the said Warren, or his legal representatives, reconveyed by the said Railroad and Banking Company.

In witness whereof the said Warren Jordan hath hereunto set his

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hand and seal this said thirteenth day of October, in the year eighteen hundred and thirty-nine.

WARREN JORDAN. [L. S.]

Signed, sealed, and delivered in presence of—
REUBEN THORNTON,
GEORGE MERCH, *J. P.*

GEORGIA, *Baker county.*

I, Seth C. Stephens, clerk of the superior court of said county, do hereby certify, that the foregoing seven pages contain a true copy of a mortgage deed recorded in my office on the 16th day of December, 1839, in record book of deeds, 7 pages, 180, 181, 182, 183, 184, 185, and 186, as appears upon said record.

Given under my hand and private seal, there being no seal of office, this 24th day of January, 1844.

SETH C. STEPHENS,
*Clerk.* [SEAL.]

*Exhibit C.*

STATE OF GEORGIA, *Hall county.*

To all and singular the sheriffs of said State, greeting:

We command you, that [of] the goods and chattels, lands, and tenements of Warren Jordan and Reuben Thornton, you cause to be made the sum of eight thousand seven hundred and forty-three dollars and seventy-three cents, principal, and the further sum of seven hundred and thirty-eight dollars and thirty-seven cents, interest, up to the twenty-first day of March, 1842; and also the further sum of eleven dollars and seventy-five cents for costs, with interest on the principal sum from the 21st day of March, 1842, which Peninah W. Thomas, lately in our superior court of said county, recovered against Warren Jordan and Reuben Thornton, for her principal, interest, and costs; and that you have the several sums of money before the judge of said court, on the third Monday in September next, to render to said Peninah W. Thomas the principal, interest, and costs aforesaid; and have you then and there this writ.

Witness the honorable Junius Hillyer, judge of said court, this thirtieth day of March, 1842.

E. M. JOHNSON, *Clerk.*

Served the within on sixty barrels of corn, more or less; one thousand bundles of fodder, more or less; one wheat fan, one wheat thrasher, five bushels of oats, more or less; forty head of stock hogs, as the property of Warren Jordan.

B. DANEGAN, *Sheriff.*

*April* 30, 1842.

The above property sold, and the money paid over to older fi. fas., by order of the court.

B. DANNEGAN, *Sheriff.*

January 15th, 1844. I do hereby certify, that Peninah W. Thomas hath paid all costs which has accrued in the within case, and has given bond and security in terms of the law for the eventual condemnation money, for five thousand dollars.

SETH C. STEVENS, *D. Clerk.*

IN CHAMBERS, *January* 18*th*, 1844.

Read and sanctioned.

Let the State's writ of subpœna and injunction issue in the premises, each in the penalty of ten thousand dollars, and such other and further proceedings be had as are usual in equity.

Given under my hand and official signature.

WILLIAM TAYLOR,
*J. S. C. S. W. C.*

GEORGIA, *Baker county.*

To Farish Carter, his agents and attorneys, and to George W. Collier, sheriff of Baker county, and his deputy:

Whereas it has been represented to us by Peninah W. Thomas, in a bill of complaint which she has exhibited for that purpose, that a mortgage fi. fa , issuing on a foreclosure, at the last superior court of said county, at the instance of Farish Carter, against Warren Jordan, has been levied on certain lots of land, situate, lying, and being in said county, and that the same are advertised for sale for the first Tuesday in February next. It has been further represented to us, that said execution ought in good faith to be credited with large sums of money, which have come to the hands of the plaintiff, and that there is considerable other property of great value, which ought in justice to be first sold, and the proceeds applied to the payment of said mortgage, before the same is permitted to interfere with the said lands in Baker county, and thereby defeat the claims of the said Peninah W. Thomas:

Now, being willing to be certified of the truth of these allegations, in order that justice may be administered in the premises, we do hereby command you, and each of you, to desist from the said sale, as well as all other proceedings under or by virtue of said mortgage fi. fa., until the further order and decree of this court; and this you may in no wise omit, under the penalty of ten thousand dollars.

Witness the honorable William Taylor, judge of said court, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and forty-four.

SETH C. STEVENS, *Clerk.*

GEORGIA, *Baker county*.

To Farish Carter, greeting:

For certain causes offered before us in chancery, we command and strictly enjoin you, that, laying aside all other business, and notwithstanding any excuse, that you be and appear before us, in our court of chancery, at a court to be held at the court-house in said county, on the first Monday in June next, then and there to answer all and singular the matters and things objected to [by] you in the foregoing bill, and further to submit to, [and] abide by, and perform, such order and decree in the premises, as shall seem agreeable to equity and good conscience, and this you may in nowise omit.

Witness the honorable William Taylor, judge of said court, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and forty-four.

SETH C. STEVENS, *Clerk*.

GEORGIA, *Baker county*.

I acknowledge due and legal service on the within bill, and waive copy, process, and further service.

GEO. W. COLLIER,
January 27, 1844. *Sheriff of Baker county, Georgia.*

I acknowledge due and legal service of the within bill.

FARISH CARTER,
By R. K. HINES,
February 3, 1844. *Attorney at law.*

*Bill in equity in Baker superior court. June term*, 1844.

PENINAH W. THOMAS
vs.
FARISH CARTER.

The answer of Farish Carter, defendant, to the bill of complaint of Peninah W. Thomas, complainant.

1st. This defendant, now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering saith:

2d. That he admits that the said Warren Jordan and Benjamin Thornton did make and deliver their joint and several promissory note to complainant, at the time and place, and for the sum of money, in said complainant's bill specified; that the said Warren Jordan, at the same time and place, executed his deed of mortgage to secure the sum of money specified in said promissory note, as charged by com-

plainant, and the copy of said mortgage deed annexed to complainant's bill, and marked exhibit A, is a true copy; and that said mortgage has been foreclosed, and execution issued thereon at the time by the court, for the amount, and against the property, as charged by complainant's bill. This defendant further admits, that said complainant recovered judgment at common law, at the March term, eighteen hundred and forty-two, of the superior court of Hall county, for the sum of eight thousand seven hundred and forty-three dollars and seventy-three cents, with interest, and cost of suit, against said Warren Jordan, and said Reuben Thornton, and that a copy of the execution issued thereon, annexed to complainant's bill, marked exhibit C, is a correct copy.

3d. This defendant answering saith, that one John Welchel, and the said Warren Jordan as his security, being indebted to this defendant by their two certain promissory notes, one for the sum of eight hundred and forty-seven dollars and sixty-six cents, and the other for the sum of five thousand dollars, making together the sum of five thousand eight hundred and forty seven dollars and sixty-six cents of principal, failed and wholly neglected to pay said notes when they respectively became due and payable, and that this defendant instituted his action at common law, in the superior court of the county of Hall, in this State, against the said John Welchel and Warren Jordan, his security, and recovered judgment against them at the March term, eighteen hundred and forty, of said county, for the principal of said notes, the interest then due thereon, and the costs expended in said suit; which said several sums of money, or the principal portion thereof, with the accruing interest thereon, was justly due and owing to this defendant, at the time the said complainant exhibited her bill against this defendant. Before, and all of which will more fully appear by reference to the copies of said executions, with the entries therein, hereunto annexed, marked exhibits A and B, which defendant prays may be taken as part of his answer, and referred to as often [as] may be necessary. This defendant denies that the above specified notes of the said Welchel and Jordan, or any other claims now or ever held by this defendant upon the said Warren Jordan, were purchased by this defendant upon speculation, or with a view to defeat the recovery of the complainant's claims upon the said Warren Jordan, or in any way to injure or oppress said complainant.

4th. This defendant further answering admits, that the said Warren Jordan did, on the thirteenth day of October, in the year eighteen hundred and thirty-nine, in compliance with a previous agreement and understanding, as therein recited, between the said Warren Jordan and the said Georgia Railroad and Banking Company, executed and delivered to said company his mortgage deed upon his estate, both real and personal, to wit, his houses, plantations, lands and negroes, which comprised, so far as this defendant is informed or knows, the whole of the valuable property which the said Jordan owned and possessed, to secure to said company the sum of twenty-two thousand five hundred dollars, then owing to said company by the said Warren Jordan, which

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said mortgage did include the four lots of land in Baker county, afterwards, to wit, on the twenty-second day of February, in the year eighteen hundred and forty, mortgaged by said Warren Jordan to said complainant, to secure the payment of the sum of eight thousand seven hundred dollars and seventy-three cents, and that the copy of said mortgage deed annexed to said complainant's bill, marked exhibit B, is a correct copy.

5th. This defendant further answering saith, that besides the aforesaid mortgage debt to the Georgia Railroad and Banking Company, which at the commencement of the year eighteen hundred and forty-two, amounted to or about the sum of sixteen thousand dollars, the aforesaid judgment debt of eight thousand seven hundred and forty-three dollars and seventy-three cents of principal, beside interest and costs to said complainant; and the said judgment to this defendant of five thousand eight hundred and forty-seven dollars and sixty-seven cents of principal, besides interest and costs, against the said Warren Jordan; the said Warren Jordan was indebted to sundry other persons by judgments older than the judgments in favor of this defendant and said complainant, and by sundry persons' judgments, and in various other ways, was greatly involved and embarrassed, far beyond the means or ability of said Warren Jordan to pay off or discharge; all which, as this defendant believes, was well known to the complainant at the time; and that the said Warren Jordan, to avoid the payment of his debts, and to place his moveable property beyond the reach of his creditors, about the month of February, in the year eighteen hundred and forty, caused the whole of the negroes mentioned in said mortgage to the Georgia Railroad and Banking Company, except those which had been previously sold by the sheriff of Hall county, to be secretly and clandestinely removed and run from his plantation in the county of Baker, beyond the limits of this State, with the intention of placing said negroes wholly out of the reach of said judgment, and other creditors.

6th. This defendant further answering saith, that after the removal as aforesaid of said negroes by the said Warren Jordan that his real estate and perishable property, consisting of the lands, houses, and lots in the county of Hall and Baker, and none other, so far as this defendant is informed and believes, specified and in said mortgage to the Georgia Railroad and Banking Company, was not sufficient to discharge said mortgage debt, which being of older date than the judgments in favor of this defendant, or the mortgage and judgment in favor of complainants, was entitled to priority of payment; and when said lands were sold and proceeds so applied, would leave, as this defendant believes, nothing for the satisfaction of former judgment or mortgage creditors; all of which, as this defendant believes, was well known to the complainant at the time.

7th. This defendant further saith, that being satisfied that the property of the said Warren Jordan, in this State, would not satisfy said mortgage debt, and that his judgment at common law against the said Warren Jordan created no lien upon his property, beyond the limits

of Georgia, he was induced to enter into a negotiation for the purchase of said mortgage, with the Georgia Railroad and Banking Company, influenced solely by the hope, that by promptly and vigilantly pursuing said negroes, and subjecting them to the payment of said mortgage debt, the lands in this State would be left unencumbered therewith, out of which he and other judgment creditors might procure satisfaction of their claims, in whole or in part; with this intention this defendant did, on the thirty-first day of May, in the year eighteen hundred and forty-two, after said Warren Jordan had removed his negroes from the State of Georgia, as aforesaid, and when that fact was well known to said complainant, and other creditors of said Warren Jordan, purchase the aforesaid mortgage of the said Georgia Railroad and Banking Company, by paying therefor the principal and interest then due thereon, which, on the day aforesaid, amounted to the sum of sixteen thousand one hundred and thirty-six dollars and thirty-nine cents; all of which will more fully appear by the deed of assignment of said mortgage to this defendant, a copy of which is hereunto annexed, marked exhibit C, which he prays may be taken as a part of this answer, and referred to as often as may be necessary.

8th. This defendant further answering admits, that subsequent to this assignment he did proceed to foreclose, and did foreclose, said mortgage at the time, and for the amount, and in the court, as set forth by the complainant, so far as the real estate in the county of Baker embraced therein, and that the execution issued upon said foreclosure was levied upon the three lots of land, and said land advertised for sale, as charged by complainant; but this defendant denies that he ever received the sum of ten thousand dollars, or any other sum or sums of money, except as hereinafter set forth and exhibited upon said mortgage, or the property therein specified, or from any other property of the said Warren Jordan, or on his account, or from or through him, in any other way, manner, or form.

9th. This defendant further answering saith, that prior to the purchase and assignment of said mortgage to this defendant, and after said negroes, in said mortgage specified, except the three before mentioned, had been removed by said Warren Jordan, and his agents, to Appalachicola, Florida, that the whole of said negroes were sold by the said Reuben Thornton, the attorney in fact of the said Warren Jordan, upon certain considerations, to a company, styling themselves Bennett, Farrior & Floyd, to whom said negroes were delivered by said Reuben Thornton, agent as aforesaid, and who, immediately upon the receipt thereof, shipped the greater portion of said negroes to New Orleans, or elsewhere, and sold the same to persons who transferred them to parts unknown to this defendant; and this defendant denies all personal knowledge of the present locality of said negroes, nor has he received one cent, either from the said Reuben Thornton, on account of the sale of said negroes, or from the purchasers thereof, or in any other manner or form; and this defendant is fully impressed with the conviction, that all of said negroes, so sold and scattered as aforesaid, mentioned in said

mortgage, are wholly lost to him, or if they, or any part of them, should ever be recovered and condemned under said mortgage, it will not be without expense, labor, hazard, and trouble, which would be greater than their value.

10th. This defendant further answering saith, that such of said negroes, mentioned in said mortgage, as were not thus removed from the Territory of Florida, and whose names are set forth in the schedule hereinafter mentioned, after the sale as aforesaid, fell to the share of one A. T. Bennett, one of the aforesaid purchasers from said Reuben Thornton, agent as aforesaid; and that the said Bennett, fully aware of the encumbrances resting upon said negroes, for some time kept them concealed from this defendant, and scattered in different parts of said Territory, and used every precaution and every effort to keep them out of the way of any judicial or other process founded upon said mortgage; and this defendant is fully satisfied, that nothing but the great exertion, vigilance, and promptness of this defendant, and the agents and attorneys in fact and at law, employed by him for the purpose, enabled him finally to arrest, and afterwards to sell, any portion of said negroes, or to recover any part of the money due upon said mortgage, to effect which he was compelled to foreclose said mortgage in the county of Franklin, and Territory of Florida, as will more fully appear by reference to the record of said foreclosure, a copy of which, and the proceedings therein, is hereunto annexed, marked exhibit D, which this defendant prays may be taken as part of his answer, and referred to as such as often as may be necessary; and this defendant further saith, that he was compelled to employ said attorneys and counsellors to aid and assist him in said foreclosure, and in other suits and defences in and about the recovery of said negroes, at great expense, and was likewise compelled to pay sundry persons, who aided and assisted the marshal and other officers of said Territory to look up, find, and arrest said negroes, and after they were arrested to keep a constant armed guard and watch over them, to prevent said Bennett, his agents and abettors, from recapturing said negroes, which the said Bennett repeatedly threatened to do with force and arms, waylaying said officers and guard, and dogging their movements, and watching every opportunity to carry his threats into execution, and which this defendant verily believes he was prevented from doing, only by the extraordinary vigilance, firmness, and determination in opposing his various efforts, exhibited by this defendant, said officers and persons employed by him as aforesaid, for whose services this defendant had to pay, from time to time, sums of money, without which these services could not have been procured, as they were rendered him at great hazard and risk, from the known violence and reckless character of the men with whom they had to deal; but without such services, this defendant is fully convinced that not one of said negroes would have been recovered, or one cent realized upon said mortgage; and this defendant further answering said, that he was personally put to great labor and expense, from time to time, and repeatedly, in the recovery of said negroes, in attending the

courts and other places of sale, and other places in said Territory, upon business connected therewith; all of which said expenses and disbursements, so laid out and incurred, will more fully appear by reference to exhibit E, hereunto annexed, and which this defendant prays may be taken as part of his answer, and reference made thereunto as often as may be necessary; by which said exhibit it appears that said expenses and disbursements amount to the sum of two thousand eight hundred and sixty-nine dollars; and this defendant submits to this court whether in equity and good conscience the said sum should not be deducted from the amounts of said sale, as properly and legitimately chargeable upon the proceeds thereof, and necessarily incurred in foreclosing of said mortgage, and in the recovery and sale of said negroes.

11th. This defendant answering saith, that he did succeed in a levy of said execution so issued as aforesaid, at two different times, upon thirty-two in all of said negroes mentioned in said mortgage, who were afterwards set up and exposed to sale, and sold after due and public notice, according to the laws of said Territory, at public outcry at the usual place and within the usual hours of sale by the marshal of the Appalachicola district in said Territory; all of which will more fully appear by reference to exhibit D, hereunto annexed, setting forth fully the number, the names, and description of said negroes, and the prices at which they were severally sold at said sale. This defendant being desirous that said negroes should bring full prices, instructed his agent, Richard H. Long, esq., to attend said sale, and bid for said negroes for this defendant, so as to make them bring severally fair prices, or to buy them in for this defendant, that he might bring them back to Georgia, and realize for them their full value; that said Richard H. Long did accordingly attend said sale and bid off said negroes for this defendant for the aggregate sum of nine thousand three hundred and eighty-four dollars, from which was deducted the sum of one thousand and eighty-seven dollars and seventy cents, the court cost and other expenses incurred in arresting, keeping, and selling said negroes, so far as allowed by the court of Franklin county in said Territory, and leaving the nett amount of said sale the sum of eight thousand two hundred and ninety-seven dollars and thirty cents; but this defendant further states, that after said sale, and while said negroes were in the possession of said Richard H. Long, in said Territory, the said A. T. Bennett, with a band of armed men, did with force and arms, and in the dead hour of the night, seize and carry away out of the possession of the said Richard H. Long, sixteen of said negroes so purchased as aforesaid, and did immediately, and before any successful pursuit of said negroes could be made, carry them to places wholly unknown to this defendant, to wit, Cato a man, Elias a man, Sam a man, John a man, Dinah a woman, and her four children, Jane a woman, and her child, Nancy and her infant child, Camilla a girl, Charles a small boy about four years old, and Annetta an infant about eighteen months old, which were bid off at said sale for this defendant at the aggregate sum of two thousand nine hundred and fifty dollars; which will more

fully appear by reference to the exhibit F, hereunto annexed, and which this defendant prays may be taken as part of his answer and reference made thereunto as often as may be necessary. This defendant further saith, that he has, by himself and his agents, made the most thorough and diligent search for said negroes, but without success, and he is apprehensive that said negroes are wholly lost to this defendant, as he is informed and believes that said Bennett is insolvent and unable to respond to any damage which might be recovered against him for the conversion of said negroes. And this defendant submits to this court whether he is not entitled in equity and good conscience to deduct the aforesaid sum of two thousand nine hundred and fifty dollars from the amount which said negroes brought at said sale, as the same has been wholly lost and unavailable to this defendant without any fault or negligence on his part; and after using the best efforts to realize the most that could be made out of said mortgage property, this defendant now offers to surrender the titles to said negroes made by the marshal of said Territory, or to reconvey said negroes to said Warren Jordan, or to convey them to said complainant, or in any other this honorable court may direct, for the use and benefit of the creditors of the said Warren Jordan, so soon as the amount due him by the said Warren Jordan as aforesaid is received by him.

12th. This defendant further answering saith, that one of the lots mentioned by said complainant in her bill, to wit, lot number two hundred and twenty-four, in the second district of Baker county, and embraced in the mortgage of the said Warren Jordan to the said Georgia Railroad and Banking Company, and also in the mortgage to complainant, was, after the same was so mortgaged by the said Warren Jordan, levied upon by virtue of an execution against the said Reuben Thornton, from whom said lot was bought, and older date than the deed of the said Thornton to the said Jordan, and was sold as the property of said Thornton by the sheriff of Baker county, and purchased by one Benjamin S. Jordan for the sum of eight hundred dollars, and entirely lost to this defendant, as assignee of said mortgage, all of which [was] well known to said complainant at the time.

13th. This defendant further answering saith, that he has been compelled, to prevent said mortgaged property from being sold in detached parcels, and thereby maiming and impairing the value of the whole, to purchase a certain execution issued from Jasper superior court in favor of one John Thomas against Wynings and said Warren Jordan, of older date than the mortgage of the said Warren Jordan to the said Georgia Railroad and Banking Company, and upon which there was, at the time of the purchase and transfer to this defendant, to wit, on the thirtieth day of March, in the year eighteen hundred and forty-two, due the sum of six hundred and eighty-nine dollars and twenty-nine cents, principal, interest, and costs; which will more fully appear by reference to a copy of said execution and transfer hereunto annexed, marked exhibit C, which he prays may be taken as part of his answer, and reference made thereunto as often as may be necessary;

to which said execution the whole of said property in both of said mortgages specified is subject. This defendant was much surprised at the charge made by said complainant in her said bill that John Wynings, the principal in said execution, was abundantly responsible for the payment of the same, as it appears by the entries upon said execution that the property of the said John Wynings had long since been levied upon and sold, and the proceeds of said sale applied to older executions against the said John Wynings. This defendant, being gratified to find that said complainant was of a different opinion, did transmit this execution to his authorized agent in this behalf, with instruction to transfer the same to said complainant, upon the payment of principal and interest thereon, that she might collect the same out of the said Wynings, and thus relieve the property of the said Warren Jordan from the payment of the same, which it was as much the interest of said complainant as of this defendant to do, as the lands mortgaged by the said Warren Jordan to the said complainant were alike subject to said execution if the said John Wynings was abundantly able to pay said debt, as said complainant charged in her bill; but the said complainant, upon being called upon by the agent of this defendant, positively refused to accept a transfer of the same. This defendant knows of no property of the said John Wynings, the principal, out of which said execution can be satisfied, and the same must go upon the property of the said Warren Jordan, the security.

14th. This defendant further answering admits, that a house and lot in Gainesville, Hall county, was sold under the common law execution in favor of this defendant, and subject to said mortgage in favor of the Georgia Railroad and Banking Company, as fully appears by reference to exhibit A to this answer annexed; but denies that said house and lot is worth the sum of five thousand dollars, or any such sum; but that, as this defendant is informed and believes, said house is not worth more than two thousand dollars. This defendant further states that he has not foreclosed said mortgage in the county of Hall, for the reason he has been compelled to use the same, as heretofore set forth, in the county of Baker, and in the territory of Florida; but wholly denies that the property remaining unsold, either in Hall or in Baker county, will, when brought into market, satisfy the balance now due upon said mortgage, after applying the amount which has been received by this defendant, and is properly applicable to the payment of said mortgage; on the contrary, this defendant saith that he is satisfied, from all he knows or can learn in regard to the value of the twelve lots of land now remaining unsold in Baker county, that they do not exceed the value of five hundred dollars a lot upon an average, nor would this defendant be willing to purchase them at that price.

15th. This defendant further answering saith, that he has also incurred considerable costs and expenses in procuring the foreclosure of said mortgage on said lots in the county of Baker, which this defendant has paid, as will more fully appear by exhibit H, hereunto annexed, and which this defendant prays may be taken as a part of his answer,

and reference made thereunto as often as may be necessary, amounting to the sum of four hundred and thirty-seven dollars and fifty cents; which this defendant submits to this court should be deducted from the sum raised by the sale of said negroes as just and equitable charges growing out of the foreclosure of said mortgage.

16th. This defendant further answering saith, that the principal and interest, besides the costs, now due upon said mortgage, so assigned and now held by said defendant as aforesaid, amounts to the sum of nineteen thousand one hundred and forty-nine dollars; that this defendant is jointly and equitably entitled to deduct from the amount of eight thousand two hundred and ninety-six dollars and thirty cents, for which said negroes sold, the sum of seven thousand and eighty-one dollars and nineteen cents, being the aggregate of the several exhibits annexed to this answer, and heretofore referred to; which leaves the sum of twelve hundred and fifteen dollars and eleven cents to be applied to the payment of said mortgage debt, and makes the balance due thereon about the sum of seventeen thousand nine hundred and thirty-three dollars and eighty-nine cents; which several deductions this defendant insists should be made according to equity and good conscience, and the express terms of said mortgage, which provides for the allowance of all reasonable charges and expenses which might be incurred in foreclosing said mortgage; for the payment of the above balance of seventeen thousand nine hundred and thirty-three dollars and eighty-nine cents, there remains unsold the lands before specified in Baker and Hall counties, which this defendant believes, and so says, are wholly insufficient to satisfy said balance. This defendant further answering saith that, as far as this defendant knows or is informed, said complainant has not pursued said Warren Jordan, or attempted to procure satisfaction of her debt out of the property which he removed from this State, nor has said complainant, or any other creditors of said Jordan's, either by money or labor, or in any other way, aided and assisted this defendant in pursuing and recovering said property so removed as aforesaid; but while this defendant was so engaged as aforesaid, and which complainant well knew at the time, said complainant, and the other creditors of the said Warren Jordan, so far as this defendant is informed and believes, remained wholly idle and indifferent; and this defendant now submits to this court whether it is either equitable or just for said complainant to come into court at this late hour to divide with this defendant the funds so raised as aforesaid, or to restrain him from proceeding and selling the property so mortgaged as aforesaid, and which remains yet unsold, and applying the proceeds thereof to the balance still due upon said mortgage.

16th. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied,

is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

R. K. & J. B. HINES,
*Defendant's solicitors.*

GEORGIA, *Bibb county.*

I, Farish Carter, do swear, that what is contained in my answer, so far as concerns my own act and deed, is true of my own knowledge, and that what relates to the act or deed of any other persons I believe to be true.

FARISH CARTER.

Sworn to and subscribed before me, this 15th day of October, 1844.
JESSE L. BUM, *J. P.*

*Exhibit A.*

Copy fi. fa.

GEORGIA, *Hall county.*

To all and singular the sheriffs of said State, greeting:

We command you, that of the goods and chattels, lands and tenements, of John Witchel and Warren Jordan, security, you cause to be made the sum of eight hundred and forty-seven dollars and sixty-six cents, principal, and the further sum of forty-eight dollars and ninety-six cents, interest up to the twentieth day of March, 1840; and also the further sum of eight dollars for cost, with interest in the principal sum from the 20th day of March, 1840, which Farish Carter, lately in our superior court of said county, recovered against John Witchel and Warren Jordan, security, for his principal, interest, and costs, and that you have the said several sums of money before the judge of said court on the third Monday in September next, to render to the said Farish Carter the principal, interest, and cost aforesaid, and have you then and there this writ.

Witness the honorable Thomas W. Harris, judge of said court, the twenty-fifth day of March, 1840.

(Signed) E. M. JOHNSON, *Clerk.*

Levied the within on two negroes, Jack and Mahala, and one crib of corn, about 16 barrels, and one crib of corn, supposed 140 barrels, about 1000 bundles of fodder, and four stacks of oats, May 3, 1841.

(Signed) B. DUNAGAN, *D. sheriff.*

The levy on the above stacks of oats dismissed by R. Thornton, agent for plaintiff.

(Signed) B. DUNAGAN, *D. sheriff.*

1933.

Levied the within execution on one clay bank horse, June 28th, 1841.

(Signed) B. DUNAGAN, *D. sheriff.*

The small crib of corn sold July 6th, 1841, for $16 85. Deduct sale per cent. and expenses, 20 cents, leaves $15 65 to credit fi. fa.

(Signed) B. DUNAGAN, *D. sheriff.*

The above levy on negroes Jack and Mahala, and large crib of corn, and fodder disposed of and dismissed in conformity to an award made by referees between the claimant and other party, and by order of the parties.

(Signed) B. DUNAGAN, *D. sheriff.*

Sold the aforesaid clay bank horse for sixty dollars the 1st Tuesday in August, 1841.

(Signed) B. DUNAGAN, *D. sheriff.*

Which said sixty dollars was claimed by an older fi. fa., and paid by order of court.

(Signed) B. DUNAGAN, *D. sheriff.*

Levied this fi. fa. on half of lot No. 136, part of lot No. 148, lots Nos. 149, 150, 152, 153, 154, 167, 168, all containing sixteen hundred and seventeen acres, more or less, in the 9th district of Hall county, the house and lot No. three in the town of Gainesville, the house and lot formerly occupied by James W. Jones as a storehouse, thirty-eight barrels of corn, one loom, one log chain, 500 bundles of oats, more or less, 1 lot shucks, one lot rock, as the property of Warren Jordan; also five thousand five hundred feet of kiln dried lumber, more or less, this 30th May, 1840.

(Signed) B. DUNAGAN, *D. sheriff.*

The above property sold on the first Tuesday in July, 1842, and the money paid over to another fi. fa. of Farish Carter vs. John Whitchel and Warren Jordan, security, for five thousand dollars principal, under an order of court passed at September term, 1842, of Hall superior court, 22d Sept., 1842.

(Signed) B. DUNAGAN, *Sheriff.*

This day I have levied the within fi. fa. on lot 139, 10th district, and fraction 147, and part fraction, west side, No. 156, all in 10th district of said county, as the property of Warren Jordan, this the 23d September, 1842.

(Signed) J. J. BAUGH,
*Deputy sheriff.*

The above parcels of land sold for the sum of nine hundred and eighty dollars and fifty cents to David Whitchell, jun., and after de-

ducting commissions, levying and advertising fees, leave the sum of eight hundred and ninety-two dollars 87½ cents, which was paid over by order of court to other fi. fas.

(Signed) J. J. BAUGH,
*Deputy sheriff.*

(*Exhibit B.*)—*Copy fi. fa.*

GEORGIA, *Hall county.*

To all and singular the sheriffs of said State, greeting:

We command you that of the goods and chattels, lands and tenements, of John Whitchell and Warren Jordan, security, you cause to be made the sum of five thousand dollars principal, and the further sum of two hundred and eighty-eight dollars and eighty-eight cents, interest up to the 20th day of March, 1840; and also the further sum of five dollars and fifty cents for costs, with interest on the principal sum from the 20th day of March, 1840, which Farish Carter, lately in our superior court of said county, recovered against John Whitchel and Warren Jordan, security, for his principal, interest, and costs; and that you have the said several sums of money before the judge of said court on the third Monday of September next, to render to the said Farish Carter the principal, interest, and cost aforesaid; and have you then there this writ.

Witness the honorable Thomas W. Harris, judge of said court, the twenty-fifth day of March, 1840.

(Signed) E. M. JOHNSON, *Clerk.*

$318 85. Received of John Whitchel three hundred and eighteen dollars eighty-five cents on the within fi. fa.

(Signed) F. CARTER.
April 21st, 1841.

Levied the within on lot No. 147, in the 3d district of Baker, 2d day of August, 1842.

(Signed) GEO. W. COLLIER,
*Deputy sheriff, B. C.*

Levied the within fi. fa. on lots 273, 274, 275, 286, 180, 179, 219, 220, 22, and 285, in second district of originally Early, now Baker county. Also 181 in third district of said county, as the property of Warren Jordan. Property pointed out by R. F. Brantly, January 25th, 1842.

(Signed) GEORGE W. COLLIER,
*Deputy sheriff.*

Received $1 87½ from the defendant, January 29, 1842.

(Signed) GEORGE W. COLLIER, *D. S.*

Served the within fi. fa. on lots of land Nos. 271 and 272, in 2d dis-

1956.

trict; also 200, 287 in the 2d, and No. 243 in 3d district, June 28th 1842.

(Signed) GEORGE W. COLLIER, *D. S.*

The above levy dismissed by order of the plaintiff, September 5th, 1842.

(Signed) GEORGE W. COLLIER,
*Deputy sheriff, Baker county.*

Received of J. J. Baugh, D. S., fifteen hundred and seventy-two $\frac{59}{100}$ dollars on account of this fi. fa., paid under an order of court at September term, 1842, deducting twenty-one $\frac{81}{100}$ dollars, commissions of sale not being allowed in the order, not recollected at the time, this 22d September, 1842.

(Signed) FARISH CARTER.

Received of J. J. Baugh, deputy sheriff, the sum of eight hundred and ninety-two dollars eighty-seven and a half cents, money arising from the sale of land to Davis Whitchel, jr., after deducting $18 72½ commissions on sale and levy and advertising fees, and paid over to this fi. fa. under an order of court. See minutes of court at March term superior court, Hall county, 1843, March 26th, 1843.

(Signed) FARISH CARTER.

Received of J. J. Baugh, deputy sheriff, three hundred and eighty dollars and seventy-five cents, money arising from the sale of personal property of Warren Jordan, after deducting $16 33½ cents commission on sale, levy, and advertising fees, said sum being paid over to this fi. fa. under an order of court, (see minutes,) obtained at March term superior court, Hall county, 1843. March 26th, 1843.

(Signed) FARISH CARTER.

FARISH CARTER
vs.
JOHN WHITCHEL & Warren Jordan. } Illegality.

March term, 1842.

On considering the grounds of illegality taken in this case, it is ordered, that the same be set aside, and that the fi. fa. is ordered to proceed.

A true and perfect copy from the minutes of Hall superior court, March term, 1842.

March 25th, 1842.

(Signed) E. M. JOHNSON, *Clerk.*

*Exhibit C—Copy of assignment.*

GEORGIA.

Know all men by these presents, that the Georgia Railroad and

Banking Company, for and in consideration of the sum of sixteen thousand one hundred and thirty-six dollars and thirty-nine cents, to them paid by Farish Carter, esquire, of Scotsborough, in said State, at or before the delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, and assigned and set over, and by these presents do bargain, sell, grant, assign, and set over, unto the said Farish Carter, his heirs and assigns, a certain mortgage deed entered into on the thirteenth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, between Warren Jordan, of Hall county, in said State, as mortgagor, and the said Central Railroad and Banking Company of Georgia, as mortgagee, which said mortgage deed was recorded on the day and year aforesaid, in the clerk's office of the superior court of said county, in book E, folio 261 to 263; and on the sixteenth day of September in said year, in the county of Baker, in said State, in the clerk's office of the superior court of said last mentioned county, in book 7, on pages 181, 182, 183, 184, 185, and 186, as by reference thereto will appear.

Together with the lands and negroes, houses and buildings, therein mentioned and described, with the rights, members, and appurtenances thereto belonging, and all the estate, right, title, and interest of the said Georgia Railroad and Banking Company therein: To have and to hold all and singular the premises hereby granted and assigned, unto the said Farish Carter, his heirs and assigns, forever, without resource in any event to the said Georgia Railroad and Banking Company; subject, nevertheless, to the right and equity of redemption of the within named Warren Jordan, his heirs and assigns, in the same.

In witness whereof, John P. King hath signed these presents as president, and James Camak hath countersigned the same as cashier, of the said Georgia Railroad and Banking Company, and affixed the seal of the said corporation hereto, this thirty-first day of May, in the year of our Lord one thousand eight hundred and forty-two.

(Signed) JOHN P. KING, [L. S.]
*President Geo. R. R. and B. Co.*

Signed by the said John P. King, as president, in our presence.
(Signed) W. H. MAHAINY,
JOHN W. WILDE.
*Notary public.*

(Signed) JAS. C. CAMAK,
*Cashier Geo. R. R. and B. Co.*

Countersigned by the said James Camak, as cashier, and the seal of said corporation hereto affixed in our presence, the word "State" being first interlined in the first page.
(Signed) JOHN REYNOLDS,
W. D. FULTON.
*Notary public.*

1957.

*Exhibit D—Copy of exemplication.*

TERRITORY OF FLORIDA, *Franklin county.*

In Franklin superior court.

In the name of the Territory of Florida, to the marshal of the Appalachicola district, greeting:

We command you, that you expose for sale, on Saturday, the thirty-first day of December instant, the following negro slaves, to wit: Jeffe, Isaac, Rica, Allen, Tom, Cato, Charles, Elias, John, Joe, Sam, Amos, Patsey and her child, a boy, Sally, Pink or Jincy, and her two children, Charles and Henry, Dinah, Avarilla, Fanny, Emeline, Andrew, Albert, Tom, an old man, Sarah, Irene, Antoinette, Clarissa, Camilla, Nancy and her infant, and Ellen, which were mortgaged to the Georgia Railroad and Banking Company, Farish Carter, assignee as aforesaid, the sum of sixteen thousand seven hundred and eighty-three dollars, with the interest thereon, at the rate of eight per centum per annum, from the sixteenth day of December, 1842, until paid; also $6 75 costs; and that you make the residue of the said sum of money of the goods and chattels, lands and tenements, of said Warren Jordan, if any there be found within your bailiwick, and make due return thereof so soon as you shall execute the same, and have then and there this writ.

Witness George F. Baltzel, clerk of our said court, at Appalachicola, this the sixteenth day of December, A. D. 1842.

(Signed) GEORGE F. BALTZEL, *Clerk.*

Executed by levying on the following negroes, to wit: Jeffe, Isaac, Rica, Allen, Tom, Cato, Charles, Elias, John, Joe, Sam, Amos, Patsey and her child, Sally, Pink or Jincey and two children, Charles and Henry, Dinah, Avarilla, Fanny, Emeline, Andrew, Albert, Tom, an old man, Sarah, his wife Irene, Antoinette, Clarissa, Camilla, Jane and child.

(Signed) H. HAWLEY, *Marshal,*
Per R. J. YOUNG,
*Deputy Marshal.*

December 16, 1842.

Executed by levying on the named negroes, Nancy and her child, Ellen.

H. HAWLEY, *Marshal.*

December 20, 1842.

At December term, 1843, of said court, the following order was entered, to wit:

GEORGIA RAILROAD COMPANY, use of Farish Carter,
vs.
WARREN JORDAN.

On motion of counsel for plaintiff, and it appearing that no return

has been made on the writ of foreclosure issued in this case, setting forth the divers accounts for which certain negro slaves had been sold under the same; and it further appearing, by evidence under oath, that the late marshal, Hezekiah Hawley, esq., died some time in the month of March last, and before the return day of the execution, and that his book and accounts of sales of said negroes were placed in the possession of his brother, Benjamin S. Hawley, before the death of said marshal, and have ever since been in the possession of said Benjamin:

Ordered, That the clerk of this court endorse on the execution issued in the above case the names of the several negroes sold, the amount for which they were severally sold, and the names of the purchasers, and the aggregate sum of said sale be endorsed on the writ.

(Signed,) S. W. CARMACK, *Judge*.

In obedience to the above order, the clerk makes the following endorsement:

Sale of negroes by virtue of the above execution, on the thirty-first day of December, A. D. 1842, after due notice, to wit: (See other page.)

| | |
|---|---|
| Rica, negro boy, 17 years old, sold to R. H. Long | $320 00 |
| Tom, aged 18 | 300 00 |
| Charles, aged 35 | 240 00 |
| Elias, aged 20 | 350 00 |
| Pink, or Ginsey, and two children, Charles and Henry, sold to R. H. Long | 380 00 |
| Dinah and four children, Amarilla, Fanny, Emeline, and infant, sold to R. H. Long | 500 00 |
| Tom and Sarah, old, sold to R. H. Long | 190 00 |
| Clarissa, 12 or 14 years old, sold to R. H. Long | 409 00 |
| Camilla, 12 years old, sold to R. H. Long | 285 00 |
| Nancy and child, sold to R. H. Long | 300 00 |
| Ellen, 10 to 12 years old, sold to R. H. Long | 230 00 |
| Sam, 35 to 40 years old, sold to R. H. Long | 105 00 |
| Total sales | $3,609 00 |

Afterwards, to wit, on the 9th day of January, 1843:

| | |
|---|---|
| Jeff, to R. C. Spann | $455 00 |
| Isaac, to R. H. Long | 500 00 |
| Allen, to R. H. Long | 500 00 |
| Cato, to R. H. Long | 260 00 |
| John, sold to R. H. Long | 405 00 |
| Irene, to R. H., paid by R. H. Long | 450 00 |
| Amos, to R. H. Long | 820 00 |
| Patsey and child, to R. H. Long | 305 00 |
| Sally, to R. H. Long | 420 00 |
| Andrew, to R. H. Long | 230 00 |
| Albert, to R. H. Long | 500 00 |

| | | |
|---|---|---|
| Irene, to R. C. Spann - - - - | 435 00 | |
| Irene and child, to R. H. Long - - - | 495 00 | |
| | | $5,775 00 |
| | | $9,384 00 |

*Cost taxed by the court.*

| | | |
|---|---|---|
| For Porter's bill of blankets - - - | $6 00 | |
| " 2 cords of wood - - - - | 10 00 | |
| " H. Hawley's bill - - - - | 86 00 | |
| " bill of shoes - - - - - | 5 50 | |
| " R. Myers, rent of house - - - | 240 00 | |
| " Benjamin Hurd, for feeding - - - | 155 36 | |
| " hire of 2 men as guards, 30 days, at $3 per day | 180 00 | |
| " hire of 8 men, to take negroes - - | 40 00 | |
| " printer's bill - - - - - | 50 00 | |
| " clerk's bill of cost - - - - | 18 75 | |
| | $791 61 | |

*Marshal's costs, or fees.*

| | | |
|---|---|---|
| For serving an attachment - - - | $1 00 | |
| " cost for support, &c., of negroes - - | 791 60 | |
| " levying execution - - - - | 1 00 | |
| " 2 bills of sale, each $2 - - - | 4 00 | |
| " commission on $9,384, or $300, at 5 per cent. | 15 00 | |
| " $9,080, at 2¼ per cent - - - | 227 00 | |
| " mileage in service of attachment, 300 miles at 4 cents per mile - - - | 12 00 | |
| " hire of 2 men for 6 days, at $3 per day - | 36 00 | |
| | | $296 00 |
| Total costs - - - - | | $1,087 70 |

TERRITORY OF FLORIDA,
*Franklin county.*

I, George F. Baltzell, clerk of the superior court of Franklin county, do hereby certify, that the foregoing pages contain a true and perfect transcript of an execution issued out of said court, with the returns thereon, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand, and have hereto affixed the seal of said court of Appalachicola, this the twenty-first day of December, in the year of our Lord one thousand eight hundred and forty-three.

(Signed) GEORGE F. BALTZELL, *Clerk*.

TERRITORY OF FLORIDA,
*Appalachicola district.*

I, Samuel W. Carmack, judge of the superior court of Franklin

county, within the district aforesaid, do hereby certify, that George F. Baltzell, whose signature appears to the foregoing certificate, as clerk of said court, duly commissioned and qualified; that due faith and credit is and ought to be given to his acts as such, and that the certificate aforesaid is in due form of law.

In testimony whereof I have hereunto set my hand and seal at Appalachicola, this the twenty-first day of December, in the year of our Lord one thousand eight hundred and forty-three.

S. W. CARMACK, [L. S.]
*Judge of the district of Appalachicola.*

*Exhibit E.*

A schedule of expenses and disbursements incurred in foreclosing Warren Jordan's mortgage in Florida, and selling negroes in said Territory:

| | |
|---|---|
| 1842. | |
| December 16. Paid A. G. Semmes, attorney at law, as per receipt No. 1 - - - - - - - | $400 00 |
| December 18. Paid Brockenbrough & Hawkins, as per receipt No. 2 - - - - - - - | 900 00 |
| 1843. | |
| December 19. Paid George S. Hawkins, as per receipt No. 3 - - - - - - - - | 200 00 |
| 1844. | |
| May 25. Paid R. J. Moses, as per receipt No. 4 - - | 100 00 |
| " H. Hawley, United States marshal, as per receipt No. 5 - - - - | 480 00 |
| " Amount of personal expenses, as per receipt No. 6 - - - - - | 419 25 |
| " Reuben Thornton, as per receipt No. 7 - | 369 75 |
| | $2,869 00 |

*Exhibit F.*

List of negroes captured by John Bennett, after they had been purchased by Farish Carter, as the property of Warren Jordan, under an execution against said Jordan:

| | |
|---|---|
| Elias, bought by Col. Long, agent at marshal's sale, for | $350 00 |
| Sam, bought by Col. Long, agent at marshal's sale, for | 105 00 |
| John, bought by Col. Long, agent at marshal's sale, for | 405 00 |
| Cato, bought by Col. Long, agent at marshal's sale for | 260 00 |
| Dinah and her children, bought by Col. Long, agent at marshal's sale, for - - - - - | 500 00 |
| Jane and her children, bought by Col. Long, agent at marshal's sale, for - - - - - - | 495 00 |
| Nancy and her children, bought by Col. Long, agent at marshal's sale, for - - - - - | 300 00 |

| | |
|---|---|
| Camilla and her children, bought by Col. Long, agent at marshal's sale, for - - - - - | 285 00 |
| Charles, 4 years old, valued at - - - - | 150 00 |
| Annette, about 18 months old - - - - | 100 00 |
| | $2,950 00 |

*Exhibit G.—Copy fi. fa.*

GEORGIA, *Jasper county*.

To all and singular the sheriffs of said State, greeting:

We command you, that of the goods and chattels, lands and tenements, of John Wynings and Warren Jordan, you cause to be made the sum of four hundred and twenty-two dollars principal, and the further sum of one hundred and forty-six dollars and eighty-five cents interest, up to the 25th day of April, 1833, and also the further sum of thirteen dollars twelve and a half cents, which John Thomas lately, in superior court of said county, recovered against the said John Wynings and Warren Jordan, for his principal, interest, and costs, and that you have the said several sums of money before the superior court on the fourth Monday in October next, to render to the said John Thomas the principal, interest, and cost aforesaid, and have you then and there this writ.

Witness the honorable Edward Young Hill, judge of said court, this 28th May, 1839.

(Signed) ROBERT KELLAN, *Clerk*.

For value received, I transfer and assign this fi. fa., together with the judgment on which it is founded, to Farish Carter, with the right to enforce the collection of the same, without recourse on me, this 7th June, 1842.

(Signed) JOHN THOMAS.

The property levied on, except the land, was sold on the first Tuesday in February inst., for the sum of two hundred and forty-seven dollars and sixty-eight cents, which sum, after deducting fees, left two hundred and thirty-five dollars and forty cents, which was paid over to an older fi. fa, Cardan Golsly, transferree of an execution in favor of James Whitfield vs. John Wynings, and Benjamin F. Ward and Lucas Powell, securities; the land claimed by Francis Irwin, which claim is returned to honorable [court] of Jasper county.

(Signed) J. W. MORGAN, *Sheriff*.

*February* 6, 1840.

The property claimed was found "not subject." The following is the levy above alluded to:

Levied this fi. fa. on three hundred acres of land, joining Alexander C. Monson, and the village of Hillsboro', and four negroes; Tom, a

man, 50 years of age; Dick, a man, 40 years of age; Amy, a woman, 40 years of age; Priscilla, a woman, 25 years of age, and two bay horses, 6 years of age. This 17th August, 1839, and levied this 25th November.

J. W. MORGAN,
*Deputy sheriff.*

*Exhibit H,*

Showing the disbursements by Farish Carter, in foreclosing the mortgage of Warren Jordan, in Baker county.

| | | |
|---|---|---|
| Oct. 1, 1844. | Paid R. K. Hines, attorney at law - | $400 00 |
| " " " | Paid printer's bill - - - - - | 37 50 |
| | | $437 50 |

Answer of Farish Carter, filed in office, November 23, 1840.
SETH C. STEVENS, *Clerk.*

PENINAH W. THOMAS
vs.
FARISH CARTER.

Bill for discovery, &c. In Baker superior court.

The supplemental answer of Farish Carter, the defendant, to the above bill of Peninah W. Thomas, the complainant.

The defendant for further answer, touching the several matters and things set forth and charged against him by complainant in her said bill, with that since the making and filing his answer to said bill, now of file in said court; that an order was granted by the honorable Lot Warren, judge of said court, dissolving the injunction in behalf of said complainant previously granted, and authorizing this defendant to proceed and sell nine of the lots of land in said complainant's bill and writ of injunction specified, viz: Lots numbers 219, 220, 271, 272, 273, 274, 275, 285, and 286, in the second district of Baker county, and embraced in the mortgage of said Warren Jordan, assigned to and held by this defendant, as charged in said bill.

In pursuance of said order, this defendant caused the aforesaid lots of land to be levied upon by the execution in favor of this defendant, obtained upon the foreclosure of said mortgage, by George W. Collier, sheriff of Baker county, who, after duly advertising the same for sale according to law, did, on the first Tuesday in July, 1845, at the court house door at Newton, in said county, and between the legal hours of sale, set up said lots severally and separately, and sell the same for the aggregate sum of twenty-eight hundred dollars; of which sum, after satisfying the cost of foreclosing said mortgage, the cost of levying and advertising said lots for sale, and the commissions on the amount of said sale, and the principal, interest, and costs of the fieri facias in favor of John Thomas, against one John Wynings and Warren Jordan, of older date than the mortgages held either by this defendant or com-

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plainant, there was then left the sum of eighteen hundred and ninety-eight dollars and eighty cents, to be credited upon the mortgage fi. fa. in favor of this defendant; all of which will more fully appear by reference to the statement of said sale hereunto annexed, marked exhibit A, which this defendant prays may be taken as a part of this answer, with leave of reference thereunto as often as may be necessary.

This defendant further answering saith, that prior to said sale the said Warren Jordan departed this life, leaving a widow and several children, a fact known to this defendant and his co-purchaser of said lands at the time of said sale, and that the widow of said Warren Jordan has since applied to this defendant, and demanded her dower, or thirds, in said lands, which incumbrance greatly diminished the value of said lands at the time of said sale, and still greatly diminishes the value in the hands of the purchasers thereof; all which is respectfully submitted by this his supplemental answer.

R. K. & J. B. HINES,
*Defendant's solicitors.*

GEORGIA, *Bibb county.*

Personally appeared before me, Farish Carter, who being duly sworn, deposeth and says, that the facts stated in the foregoing answer, so far as they depend upon his own knowledge, are true, and so far as they depend upon the information of others, he believes them to be true.

FARISH CARTER.

Sworn to and subscribed before me, this 19th day of November, 1845.
THOMAS HARDIMAN, *J. I. C.*

*Exhibit A.*

Statement of the disposition of the money received from the sale of Warren's Jordan's property on the first Tuesday in July, 1845.

| | |
|---|---|
| To amount of cost on fi. fi. - - - | $43 37 |
| To 2 levies, 1 87½ - - - - | 3 75 |
| To 7 advertisements, 2 50 - - - | 17 50 |
| To commissions on $2,800 at 1½ per ct. - | 42 00 |
| To amount paid fi. fa., John Thomas vs. John Wyning, and Warren Jordan - - | 794 58 |
| To credit of mortgage fi. fa. - - - | 1,898 80 |
| | $2,800 00 |
| By amount of sale - - - | 2,800 00 |
| Deed - - - | 3 75 |

Cost paid by Col. B. S. Jordan, July 2d, 1843.
GEORGE W. COLLIER.

December 18th, 1845.

We acknowledge service of the within supplemental answer.
D. A. VASON,
*Sol. for complainant.*

And whereas, at the December term, 1846, of said superior court, said cause was called for trial before the honorable Lott Warren, judge of said court, and submitted to a special jury of twelve good and lawful men, to wit, Franklin O. Welch, George B. King, Edward Richardson, Edward W. Teddle, Charles W. Roby, James Chainel, Nelson Tift, Jesse Slocomb, Redden Faircloth, Nathan Jordan, Cullen Sutton, John Jackson, who returned through their foreman the following verdict, to wit:

PENINAH W. THOMAS vs. FARISH CARTER. } Bill of injunction, &c.

Baker superior court, December term, 1846.

We, the jury, find and decree from the proof submitted to us in the above cause, that the within described mortgage, held and assigned to the defendant by the said Georgia Railroad and Banking Company is entitled to a credit of $1,215 71, after applying the amounts recovered by the defendant from sale of property in Florida, as within set forth, to payment of expenses incurred in foreclosing said mortgage, and deducting the amount of the negroes purchased by defendant at said sale, and which *was* stolen from his possession while on his return to Georgia; which sum of $1,215 71, we decree shall be credited on said mortgage fi. fa. at the date of said mortgage sale in Florida; we further find that the said nine lots of land in the second district of Baker county, mentioned in said mortgage, to wit, Nos. 219, 220, 221, 272, 273, 274, 275, 285, and 286, *was* sold under said mortgage fi. fa., on the first Tuesday in July, 1845, for the aggregate sum of twenty-eight hundred dollars, by George W. Collier, sheriff of said county of Baker, which, after paying executions against the said Warren Jordan, older than said mortgage, and the costs of foreclosing said mortgage and said sale, leave the sum of $1,898 80; which decree shall be credited on said mortgage fi. fa. at the date of said last mentioned sale, and that those two credits are all from the proofs submitted to us which said mortgage fi. fa. is entitled to. We further decree, that the injunction granted at the instance of complainant to restrain the sale of certain lots alleged to have been mortgaged to said complainant since the date of the mortgage transferred to the defendant, be permitted to proceed and sell the balance of the property specified in said mortgage, so assigned and held by defendant as mentioned in his answer, or so much thereof as will be sufficient to satisfy the balance of principal and interest remaining unpaid upon said mortgage, and that the defendant pay the costs of this suit, &c.

FRANKLIN O. WELCH,
*Foreman.*

Baker superior court, December term, 1846.

Upon reading the bill and answer in this cause, and the finding of a special jury, regularly empannelled, to try the same upon the proof

submitted to them upon said trial, it is considered, adjudged, and decreed, by the court now here, that the mortgage fi. fa., in favor of the said Farish Carter, set forth in the pleadings, be credited with the sum of $1,215 71, on the 30th day of December, 1842, the day of the sale of said negroes in Florida, as set forth in the pleadings and known upon the trial; and also with the sum of $1,898 80, on the second day of July, 1845, the day of the sale of the nine lots of land, as set forth in the amended answer of said defendant, found by the jury aforesaid. And it is further ordered, adjudged, and decreed, that the said Farish Carter, assignee of said mortgage, is entitled to proceed and recover the balance of the principal and interest of said mortgage debt, after deducting the two above specified credits, and that the injunction writ heretofore granted by this court at the instance of said Peninah W. Thomas, the complainant, restraining the said defendant, Farish Carter, from selling the lots of land in Baker county, specified in said mortgage fi. fa., be dissolved, and the said defendant be permitted to sell, according to law, the remaining lots of land specified in said mortgage fi. fa., and that said defendant pay the sum of , the cost of this proceeding and of said sale, and credit the balance upon said fi. fa.

R. W. & J. B. HINES,
*Sols. for defendant.*

STATE OF GEORGIA, *Baker county.*

I, Seth C. Stevens, clerk of the superior court of said county, do hereby certify, that the foregoing sixty-five pages contain a true and complete exemplification of all the proceedings had by the court in the case of Peninah W. Thomas, complainant, against Farish Carter, defendant, as appears by the records now had and held in my office.

Given under my official signature and seal of said court, this fourth day of January, in the year eighteen hundred and forty-seven.

[SEAL.]

SETH C. STEVENS, *Clerk.*

STATE OF GEORGIA, *Baker county.*

I, Lot Warren, judge of the superior court of the southwestern circuit in said State, certify, that Seth C. Stevens, whose name appears to the above certificate, is, and was at the date of the same, clerk of the superior court of said county of Baker; and that full faith and credit are due to his official acts, and that his signature above is genuine, and said certificate in due form.

Given under my hand and official signature, this 5th day of January, A. D. 1847.

LOT WARREN,
*Judge S. C. S. W. C.*

9th. Defendant introduced Samuel W. Spencer, a witness, the present collector of customs at Appalachicola, who, being sworn, produced

the following original clearance, by Robert J. Floyd, on the day of , to which was also appended a paper writing, signed by, and written in the handwriting of, Nathan Baker, as is admitted, and referred to in his testimony as a paper given by him, as deputy marshal, to Gabriel J. Floyd, then collector; which said clearance and said paper from Baker are hereto attached, marked C, and read as follows:

*Slave manifest.*

Manifest of slaves on board the schooner Magnet, burthen 80–39 tons, whereof E. Taylor is at present master, bound from the port of Appalachicola for the port of New Orleans, La.

| Names. | Sex. | Age. | Stature. ft. | Stature. in. | Class. | Shipper and owners. | Residence. |
|---|---|---|---|---|---|---|---|
| Tom | male | 70 | 5 | 7 | negro | R. J. Floyd | Appalach'a. |
| Dick | " | 45 | 5 | 6 | " | " | " |
| Allen | " | 25 | 5 | 5 | " | " | " |
| Cato | " | 45 | 5 | 7 | " | " | " |
| Charles | " | 47 | 5 | 6 | " | " | " |
| Gilbert | " | 30 | 5 | 5½ | " | " | " |
| Amos | " | 33 | 6 | 5½ | yellow | " | " |
| Meranda | " | 38 | 5 | 10 | dark | " | " |
| Elias | " | 20 | 5 | 9 | yellow | " | " |
| Jack | " | 38 | 5 | 10 | " | " | " |
| Abram | " | 50 | 5 | 5 | " | " | " |
| Major | " | 20 | 5 | 5 | " | " | " |
| Ben | " | 33 | 6 | 1 | dark | " | " |
| Sam | " | 30 | 5 | 4 | " | " | " |
| Jeffrey | " | 40 | 5 | 8 | " | " | " |
| Rachiar | " | 18 | 5 | 2 | black | " | " |
| Moses | " | 53 | 5 | 6 | yellow | " | " |
| Americus | " | 22 | 5 | 6 | " | " | " |
| Davy | " | 52 | 5 | 6 | " | " | " |
| Albert | " | 23 | 5 | 6 | " | " | " |
| Billy | " | 28 | 5 | 6 | " | " | " |
| Isaac | " | 20 | 5 | 7 | " | " | " |
| John | " | 36 | 5 | 6 | " | " | " |
| Coon | " | 55 | 5 | 7 | " | " | " |
| Joe | " | 20 | 5 | 5 | " | " | " |
| Grandison | " | 15 | 5 | 6 | " | " | " |
| Hayett | " | 15 | 4 | 0 | " | " | " |
| Andrew | " | 12 | 3 | 7 | " | " | " |
| Virgil | " | 11 | 3 | 7 | " | " | " |
| Washington | " | 12 | 3 | 6 | " | " | " |
| Tom | " | 14 | 4 | 7 | dark | " | " |

*Slave manifest*—Continued.

| Names. | Sex. | Age. | Stature. | Class. | Shipper and owners. | Residence. |
|---|---|---|---|---|---|---|
| | | | ft. in. | | | |
| Marcus - - | male | 9 | 3 6 | yellow | R. J. Floyd | Appalach'a. |
| Clem - - | " | 8 | 3 5 | " | " | " |
| William - | " | 7 | 3 6 | " | " | " |
| Monroe - | " | 9 | 3 7 | " | " | " |
| Wylee - - | child | – | – | – | " | " |
| Charles - | " | 4 | 2 10 | – | " | " |
| Simon - - | " | – | – | – | " | " |
| Sarah - - | female | 65 | 5 0 | – | " | " |
| Marther - | male | 20 | 5 0 | " | " | " |
| Patsey - - | female | 22 | 5 0 | " | " | " |
| Jane - - | " | 20 | 4 9 | " | " | " |
| Susan - - | " | 32 | 4 8 | " | " | " |
| Narcissa - | " | 36 | 5 0 | " | " | " |
| Ginsey - - | " | 24 | 5 0 | " | " | " |
| Dinah - - | " | 30 | 4 8 | " | " | " |
| Harriet - | " | 29 | 5 0 | " | " | " |
| Feader - | " | 60 | 5 8 | " | " | " |
| Mariah - | " | 25 | 4 8 | dark | " | " |
| Milly - - | " | 20 | 4 8 | " | " | " |
| Rachel - | " | 36 | 5 2 | " | " | " |
| Penny - - | " | 28 | 5 2 | " | " | " |
| Sally - - | " | 29 | 5 6 | " | " | " |
| Nancy - - | " | 36 | 5 0 | yellow | " | " |
| Charlotte - | " | 14 | 4 2 | " | " | " |
| Caroline - | " | 17 | 4 10 | dark | " | " |
| Antoinette - | " | 9 | 3 7 | " | " | " |
| Camilla - | " | 8 | 3 4 | yellow | " | " |
| Francis - | " | 11 | 3 8 | " | " | " |
| Louisa - - | " | 3 | 3 0 | " | " | " |
| Lucinda - | " | 3 | 3 0 | " | " | " |
| Ellen - - | " | 4 | 3 0 | " | " | " |
| Sarah - - | " | 5 | 3 0 | " | " | " |
| Manda - - | child | – | – | " | " | " |
| Fanny - - | " | 4 | 3 0 | " | " | " |
| Avarilla - | " | 8 | 3 4 | " | " | " |
| Mary - - | child | – | – | " | " | " |
| Crecy - - | " | 6 | 3 4 | " | " | " |
| Olly - - | " | 6 | 3 3 | " | " | " |
| Clarion - | " | 18 | 4 5 | " | " | " |
| Irena - - | " | 14 | 4 4 | " | " | " |

District of Appalachicola, port of Appalachicola, the 16th day of March, 1842, R. J. Floyd, owner of the slaves named and particularly described in the within manifest, and E. Taylor, master of schooner Magnet, do solemnly, sincerely, and truly swear, according to the best of our knowledge and belief, that the persons within described were not imported into the United States since the first day of January, 1808, and that under the laws of the State they are held to service and labor, so help us God.

R. J. FLOYD,
ELIZAR TAYLOR, JR.

Sworn to this 184 before me.
Signed , *Collector*.

District of Appalachicola, port of Appalachicola.

The 16th day of March, 1842, I, G. J. Floyd, collector of the port of Appalachicola, do hereby certify, that the within is a true copy of the original manifest or list of slaves left on file in this office; and I do further certify, that R. J. Floyd, owner of the said slaves, and E. Taylor, master of the schooner Magnet, have this day made oath in manner directed in the ninth section of the act of Congress, passed the second day of March, 1807, prohibiting the importation of slaves into the United States. I do hereby authorize the said master to proceed with the slaves named within, and being seventy-one in number, to the port of New Orleans, in the State of Louisiana.

Given under my hand, at the custom-house, Appalachicola, the day above written.

(Signed) M. P. ELLIS,
*Deputy Collector*.

CUSTOM-HOUSE, APPALICHICOLA, *Dec'r* 27, 1848.

A true copy of the original.
Given under my hand and seal of office.

C. H. AUSTIN, [L. S.]
*Deputy Collector*.

U. S. MARSHAL'S OFFICE, *March* 17, 1842.

CENTRAL BANK OF GEORGIA
vs.
JOHN L. HODGES. } Attute.

Franklin superior court.

N. Baker, deputy marshal for P. W. Gautier, marshal of the Appalachicola district, hereby *certify*, that seventy-one negro slaves, consisting of men, women, girls, and boys, and children, levied on in the above stated case, have been released by a claim bond, filed by R. J. Floyd and A. T. Bennett, agreeable to the statute in such cases made and provided.

(Signed) P. W. GAUTIER, *Marshal*,
By his deputy, N. BAKER.

1963.

To the collector of customs, Appalachicola.

To the introduction of which papers plaintiff by counsel objected; which objection was sustained by the court, and said papers ruled out; to which ruling defendant by counsel excepted. No other testimony being introduced, plaintiff's counsel abandoned his suit as to [the] negroes in the declaration mentioned, proved to have been recaptured by Bennett from Long's plantation; same being included in Columbus judgment, Carter vs. Bennett.

The said case was then argued by counsel.

Defendant by counsel then moved the court to charge the jury generally upon the law of the case, in writing, according to the statute in such case made and provided—that is to say, to charge the jury upon the points of law arising in the trial of said cause, (besides these instructions specially asked by counsel,) which the court refused to do, being of opinion that such course was not allowable by the statute of , 1848, upon that subject. In addition to said motion, defendant by counsel asked the court to give or refuse any instructions prayed for, presented to the court the following instructions, in writing, on points of law arising in the trial, prayed the court to declare its ruling thereon; in writing, as presented, and pronounce the same to the jury as given or refused, and if refused, to give his own opinion in his own form, on such refused instructions, which was done. See instructions.

*Instructions.*

1st. Instruction prayed for by defendant. That a party cannot be admitted to gainsay or deny his own solemn oath of record made in this court, setting up the facts sworn to as a defence in the action; and when such oath is introduced to the jury, it is conclusive against the party making such oath, and the highest possible evidence; which first instruction was refused by the court, and instead thereof the court gave the following:

Instruction first given. Instead of the first, I state to the jury, that a party cannot be admitted to gainsay or deny his own solemn oath of record made in a court, setting up the facts sworn to as a defence to the action; but he may be permitted to explain it, and to show that it was made in ignorance of his rights, or under a misapprehension in regard to them.

2d. Second instruction asked. That a party cannot claim title to property in any court of this State, when such claim comes through such facts as are sworn to in the plaintiff's affidavit, introduced in this trial, dated 24th July, 1844, and filed in the suit of Charles T. Thornton, to foreclose a mortgage against Bennett & Floyd, a copy of which is herewith filed, marked A. Such affidavit is conclusive against Bennett, as proof of the facts there sworn. The following is said affidavit:

Franklin superior court, on petition to foreclose mortgage.

A. T. BENNETT, impleaded with R. J. Floyd, ads.
CHARLES T. THORNTON.

The defendant, in pursuance of law, files herewith the following objections to the decree of foreclosure, herein protesting, in the first place, that the plaintiff is not entitled to the same, for objections apparent in the said proceedings, for which the same should be dismissed. The defendant sets forth that the note of $7,000, which said mortgage was given to secure, was made and executed in consideration and payment of certain negro slaves sold to defendant on the 16th day of March, in the year 1842, the same being specially set forth in a bill of sale executed by one Reuben Thornton to defendants; that said slaves, being the property of one Warren Jordan in the State of Georgia, were fraudulently, clandestinely, covinously, collusively, wickedly, illegally, and improperly, against the laws of said State, run off, removed, and carried away from said State by said Jordan and said Reuben Thornton; said removal being made, executed, contrived, and devised of fraud, covin, collusion, and guile, to convey them from said State out of, and beyond, the United States, to Texas, to the end, purpose, and intent, to convert them to their own use and profit, and to delay, hinder, and defraud the Georgia Railroad and Banking Company, and others, to whom said slaves had been mortgaged, and other creditors in said State of Georgia, contrary to the laws of said State; that the sale to said defendants by the said Thornton, and the giving and taking of the said note of $7,000, and its assignment to plaintiff, was in pursuance and consummation of the same wicked, fraudulent, corrupt, illegal, covinous, and improper design, contrivance, and purpose, and the assignment of said note to said plaintiff was under suspicious circumstances, not in the usual course of trade, without consideration, and fraudulent; that said negroes, being over the age of twelve years, were imported into this Territory by said Jordan on the day of March, 1842, from said State of Georgia, without any design of making a settlement in this Territory, and without having obtained a certificate signed by a judge of the county court, or two justices of the peace of the county from which they were brought, containing a particular description of the stature and complexion of said slaves, together with their names, ages, and sex; and furthermore, that they have not been guilty or committed murder, burglary, arson, or other felony within such State, as required by the laws of the Territory, and in defiance thereof; and further, that said slaves, having been brought into this Territory as merchandise, were sold to defendants by said Thornton on the day of March, 1842, at Appalachicola, in the Territory of Florida, where they were first sold in this Territory without coming to be registered with the clerk of the county court of Franklin county, the certificate required by law as aforesaid, containing a particular description of said slaves as aforesaid, and that they were not guilty of, and

1964.

had not committed, murder, and the other crimes aforesaid in said State; and that said slaves were sold to defendants, by said Thornton and said Jordan, without having obtained the certificate of description required by said statute, and without complying with the law of this Territory, entitled "An act relating to crimes and misdemeanors committed by slaves, free negroes, and mulattoes." And defendant saith, that on account of the defences and causes herein set forth, as well as in the action at law on the said note to which he refers, and makes a part of his objections herein, he ought not to be compelled to pay said note and mortgage, the same being on account thereof, and the reasons and causes herein set forth, null and void.

THOMAS BALTZELL,
*For defendant Bennett.*

TERRITORY OF FLORIDA, *Jackson county.*

Before me personally appeared A. T. Bennett, defendant in the above suit, who being duly sworn, saith, that the matters above stated, so far as they are inserted from his own knowledge and belief, are true, and so far as made from the knowledge of others, he believes to be true.

A. T. BENNETT.

Sworn and subscribed before me, 24th July, 1844.

R. BALLARD, *J. P.*

Which was written across by the court, and refused in these words:

"Refused, because the law is so mixed with fact in the instruction asked, that one cannot be given without the other."

3d. Defendant next asked his third instruction in these words: That no man can claim title to property sworn by himself to have been acquired by a direct violation of the statute of frauds, as against the parties intended to be defrauded; (which the court altered, by adding thereto the words, "unless he shows that he made such oath under a misapprehension as to the law, or the facts, or the evil;") which instruction, so altered, the court gave.

4th. The defendant then asked his fourth instruction, viz: That running off mortgaged negroes is felony by the law of Georgia, punishable by confinement in the penitentiary, and no man can claim property acquired through a felony, with notice of the facts, and his own affidavit of the facts is conclusive upon him. And defendant's counsel offered the court to read said Georgia statutes from a printed statute published and printed under, and by authority of, the State of Georgia. (This offer to read the laws of Georgia was not made, however, by defendant's counsel, until the argument of counsel on both sides had closed, and after instructions had been prayed for and given up to instruction 4th.) Which the court refused to hear read, and refused to give the instruction, and wrote thereon these words, "What the law of Georgia is must be proven."

5th. The defendant's fifth instruction, then asked, the court then

gave, after including therein the words here written in brackets, that a voluntary bill of sale, in which no money is paid, [or other valuable consideration given,] carries no title against prior creditors, especially mortgage creditors; and even if another person should buy for money, with notice of the person holding under such bill of sale, such new party can claim no title against such prior creditors or mortgagees.

Defendant's sixth instruction was then given by the court in these words, without alteration, viz., that a mortgagee has an absolute title, subject to be defeated by payment at the day, and after the day passed the mortgagor has no title whatever at law, and an action of trover cannot be maintained by him or his assignee.

7th. The court next gave without alteration defendant's seventh instruction, viz., after mortgage is past due, the title in personal property is fixed in the mortgagee, and he cannot be guilty of a conversion, because the property is in the mortgagee, and trover cannot be maintained against him.

8th. The court then gave without alteration defendant's eighth instruction, viz., the equity of redemption is only a title in equity; can only be set up in equity, and even there the party must come with clean hands and the utmost purity; the least fraud would put him out of court.

9th. Defendant's ninth instruction [is] in these words: That the title to the sixteen (thirteen) negroes mentioned in the action of trover in Georgia, was decided in that case to be in Farish Carter, and the jury cannot reverse or review that decision, and must throw that number of negroes from their consideration; which the court refused, writing thereon "refused," because involving facts upon which the court is prohibited from instructing the jury.

10th. The tenth was waived and erased.

11th. The eleventh was given without alteration by the court, thus: That a claim bond without securities is no claim bond, and an attachment which contains no description of personal property, and an affidavit which gives no description of the property, amounts to no claim under the statute, and would be disregarded by the court.

12th. The defendant's twelfth instruction was then given by the court without alteration, viz: When a party claims under another, whose rights have been regularly adjudicated, such adjudication bars the party to claiming.

13th. Defendant's thirteenth instruction was in these words: The record in the case of Peninah W. Thomas vs. Farish Carter, being in evidence before the jury, and commented on by plaintiff, is conclusive as to any subject matter decreed upon in said record; and if the record shows that a foreclosure has been had in Georgia on the personal property by said mortgage conveyed on the fifth July, 1842, the titles to the personal property became absolute in the mortgagee; an action of trover for said personal property, subsequently commenced by the mortgagor, or any person claiming by, through, or under him, cannot be maintained; which the court refused, writing on the same "refused,"

because it is not conclusive against any, but those who are parties or privies to the record.

14th. Defendant's fourteenth instruction was then given, without alteration, except the addition in brackets at the end, viz: A party whose title is tainted with fraud cannot rely upon such title to object to the regularity of a decree rendered in favor of the creditor against the debtor, who did so fraudulently part with his title; and this will apply in the case of a foreclosure of mortgage by mortgagee, against mortgagor, where the decree is attached by any one claiming title under a mortgagor, who has fraudulently conveyed his equity of redemption, to hinder and delay the mortgagee, [such person being cognizant of the fraud at the time of his purchase.]

15th. Defendant's fifteenth instruction was then given by the court, without alteration, to wit: If a common law judgment is rendered against a party who could not there defend his rights, a court of equity will interfere by injunction, upon proper showing, to stay the proceedings at law.

16th. The defendant then asked his sixtenth instruction, in the words following, which the court refused as written, but gave, with the additional words in brackets below, viz: In cases of foreclosure at common law under our statute, any person claiming by, through, or under a mortgagor, can come in and state his objections, under oath, showing cause against foreclosure of the mortgage property; to which the court added, ["provided, he is served with legal notice, either personally or by advertisement."]

17th. The court gave defendant's seventeenth instruction, without alteration, viz: The doctrine of notice applies only to bona fide purchasers.

18th. Defendant then asked an instruction that plaintiff, to maintain trover, must prove as follows:

1st. That he had a right to the property claimed, and was entitled to the immediate possession of the same, at the time the action was commenced. Which was given.

2d. That plaintiff must prove a conversion by the defendant, at or before the commencement of the action. Which was given.

3d. That no such property or possession can be maintained against a prior creditor of the vendor Thornton or Jordan, unless such property or possession was obtained bona fide. Which was refused by the court, and written against "Mixed with fact."

4th. That a possession obtained by fraud cannot be set up as a possession in which to sustain trover. Which was given by the court.

To all of which several rulings and opinions of said court against defendant, upon the questions of evidence, and refusals to charge and instruct, and alteration of instructions, defendant by counsel, excepts, and prays that this his bill of exceptions be signed and sealed by the court, which is done.

THO. DOUGLAS, *Judge, &c.* [SEAL.]

*Second bill of exceptions.*

Memorandum.—That, after the rendition of the verdict in this cause, defendant's counsel served plaintiff's counsel with a notice of motion of new trial, which was served by the sheriff, as appears by the following notice and service:

APPALACHICOLA, *Dec.* 21, 1848.

To ALBERT G. SEMMES, esq.,
*Attorney and counsellor at law,*
*and attorney of Archibald T. Bennett.*

Sir: You will please take notice, that I have this day entered on the motion docket a motion for a new trial in the case of Archibald T. Bennett vs. Farish Carter, in trover, on to-morrow morning, or as soon thereafter as counsel can be heard, on the following grounds, to wit:

1st. The verdict is against the law, and against the instructions of the court.

2d. Against the evidence.

3d. Against the weight of evidence.

4th. Excessive damages.

5th. Verdict gives interest as well as hires and excessive valuations.

6th. Verdict exceeds the whole amount claimed and the amount of all the slaves as valued in the declaration mentioned, when plaintiff at the trial admitted, and the same was proved, the recapture of sixteen of said negro slaves, and abandoned his suit for the same.

7th. The verdict is indefinite in finding costs as part of the damages.

8th. The jury gave a verdict beyond the value of property proved by any evidence.

9th. Surprise in ruling out testimony by the court.

10th. Because plaintiff claims title through an act, which it appears by his own oath, unexplained, was a felony in Georgia.

11th. Because no conversion was proved, and said verdict is in other respects unlawful and informal.

BROCKENBROUGH and MOSES.

(Endorsed) Served a copy of the within notice on A. G. Semmes, esq., personally, this day, Dec. 21, 1848.

JOHN LUCAS, *Sheriff F. C.*

Which said notice likewise shows the grounds of said motion for a new trial. And afterwards, on the twenty-third day of December, said motion for a new trial was argued by counsel, and said motion was overruled by the court, and new trial refused; to which refusal and opinion, defendant, by counsel, excepts, and prays that this bill of exceptions be signed and sealed by the court, which is done.

THO. DOUGLAS, *Judge, &c.* [SEAL.]

*Third bill of exceptions.*

And said motion for new trial having been overruled as aforesaid,

1966.

the said court adjourned until Tuesday, the 26th, at nine o'clock, the 24th being the Sabbath, and the 25th Christmas day, and on the opening of the court on Tuesday, the defendant by counsel, moved the court in arrest of judgment, and that said cause be dismissed from this court, with the order to the clerk to transfer the papers to the district court of the United States for the northern district of Florida, or hold said papers and proceedings subject to any order of transfer or demand from said district court; and upon said motion defendant's counsel showed to the court that this cause was instituted by a writ, of which the following was admitted by counsel of plaintiff to be a true copy, as well as of the endorsements thereon, the original having been lost or mislaid:

APPALACHICOLA DISRICT, *Florida*.

In the name of the Territory of Florida, to the marshal of the Appalachicola district, greeting.

We command you that you summon Farish Carter to be and appear before the judge of the superior court of Franklin county, at a court to be held in the city of Appalachicola on the fourth Monday of March next, to answer Archibald T. Bennett, of a plea of trespass on the case, damages twenty thousand dollars, and have then and there this writ.

[L. S.] Witness George F. Baltzell, clerk of our said court at Appalachicola, this the 17th day of December, 1842, and of the independence of the United States the sixty-seventh year.

(Signed,) GEO. F. BALTZELL, *Clerk*.

On which writ were the following endorsements:

Archibald T. Bennett vs. Carter. Summons issued 17th December, 1842.

Served by handing a copy to Farish Carter, December 17th, 1842.

RICHARD J. YOUNG, *Deputy marshal*,
For H. HAWLEY, *Marshal*.

The declaration and plea were then exhibited to the court, and the following entries on the record of the superior court of Franklin county, made prior to 3d of March, 1845, to wit:

On the twentieth day of December, 1843, the following order was made, viz:

Ordered, That this suit be continued.

On the eighth day of May, 1844, the following order was made, viz:

Ordered, That this case be continued.

On the 11th day of December, 1844, the following order was made, viz:

Ordered, That this case be continued.

On the seventeenth day of February, 1845, the following order was made, viz:

Ordered, That this case be continued by consent of counsel until next term.

And also the following entries in the records of this court, subsequent to 3d March, 1845:

On the sixteenth day of December, 1845, the following order was made, viz:

Ordered, That this case be continued.

On the fifteenth day of April, 1846, the following order was made, viz:

Ordered, That this cause be continued.

On the thirty-first day of December, 1846, the following order was made, viz:

This day came the parties, by their attorneys, and the attorneys for plaintiff moves the court to rule out the deposition of Reuben T. Thornton; and after argument thereof, the court not being sufficiently advised in the premises, takes time to consider, and this case is continued until the adjourned session.

Memo.—The court adjourned until the third Monday in February, 1847, and Judge Macrae not returning, there was no adjourned session held.

Memo.—In consequence of Judge Hawkin's absence, there was no spring term held in the year 1847.

On the thirteenth day of December, 1847, the following order was made, viz:

Ordered, That this cause be continued.

On the tenth day of April, 1848, the following order was made, viz:

Ordered, That this case be continued until the next term.

Defendant then offered to prove that Farish Carter was, at the commencement of said action, and has been at all times since, a citizen and resident of the State of Georgia; which fact was admitted by counsel of plaintiff.

Plaintiff then showed, by the evidence of William Valleau, clerk of this court, that, after his election as such clerk, at the first State election, holden in 1845, he received from George F. Baltzell, the late clerk of the superior court of Franklin county, for the Appalachicola district, the records of said court, and all the papers in the said cause, which are now in court, and that said papers were by him filed, and so have since remained in this court.

And the following order hereto appended from the district court of the United States, was served upon him, but he did not give up or surrender the papers, records, and proceedings in these cases, or any of them:

In district court of the United States, for the northern district of Florida. At judge's chambers, St. Augustine, 29th March, 1847.

Whereas, in and by an act of Congress, approved 22d February, 1847, entitled an "act to regulate the exercise of the appellate jurisdiction of the Supreme Court of the United States in certain cases, and for other purposes," it is enacted, that all and singular the records of the proceedings in the several cases which were pending in the superior

1967.

court of the late territory of Florida, under and by virtue of the act of Congress of the 23d of May, 1828, entitled an act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida, approved 26th May, 1830, and in the several cases which were pending in the court of appeals of the same Territory on the third day of March, 1845, and all and singular the records of the proceedings in the several cases in which judgments or decrees had been rendered in said courts on or before that day, and from which writs of errors could have been sued out, or appeals could have been taken, or from which writs of error had been sued out, or appeals had been taken, and prosecuted to the Supreme Court of the United States, according to the laws of the United States which were in force on the said third day of March, in the year of our Lord one thousand eight hundred and forty-five, shall, from and after the passage of the first above recited act of Congress of the 22d February, 1847, be transferred to and deposited in the district court of the United States for the district of Florida.

And whereas, it is further enacted in and by the second section of the said act of Congress, approved 22d February, 1847, that it shall be the duty of the judge of the district court of the United States for the district of Florida, immediately after the passage of said act, to cause the same to be notified to the several clerks of the superior courts, or to other officers or persons having in their possession or custody the records of the proceedings herein above referred to and described, and to demand the delivery of the same to be deposited as above specified and required; and on the refusal of such clerk or other officer or person to comply with such demand, the said judge is authorized and required to compel the delivery of said records by attachment or otherwise, according to law.

And whereas, in and by a subsequent act of Congress, approved 23d February, 1847, entitled an act to establish a court at Key West in the State of Florida, and for other purposes, it is enacted that the title and name of the said district court of the United States for the district of Florida, shall hereafter be "the district court of the United States for the northern district of Florida."

Now, therefore, in pursuance of the provisions of said act of Congress herein first above cited, approved 22d February, 1847, it is hereby ordered by the judge of said district court of the United States, for the northern district of Florida, that the marshal of said district, either by himself or by any one of his deputies, be, and he is hereby, authorized and required to make known the aforesaid act of Congress of the 22d February, 1847, to the late clerk of the superior court of the Appalachicola district, in the county of Franklin, and to the present clerk of the circuit court of Franklin county, or to any other persons within the late Appalachicola district, of the Territory of Florida, who may have the possession and custody of any of the aforesaid records of the proceedings in the cases above mentioned.

And it is further ordered, that the said marshal or his deputy shall

cause a copy of this order, duly certified under the hand and seal of the clerk of this court, to be served personally on each and every of the officers or persons above mentioned, and, at the same time, shall demand from the person on whom the same shall be served a delivery (in pursuance of the act of Congress last mentioned) of the aforesaid records herein before mentioned, or of such or so many of such records as may be in the possession and custody of such person; and the said marshal or his deputy, is hereby authorized and empowered to receive from each, or any of the persons or officers aforesaid, so notified by him, any of the aforesaid records which such person or officer may deliver to him, and to deposit the same with the clerk of this court, at Appalachicola, or such records may be delivered by the persons or officers having possession and custody of them directly to, or deposited with, the said clerk of this court, at Appalachicola.

And it is further ordered, that the marshal who shall serve this order and make demand of said records as aforesaid, shall respectfully request of each of said officers or persons on whom the same may be served, a written reply or answer to said demand, and also a written schedule of any records or papers which may be delivered by such officer or person, either to him or the clerk of this court, in pursuance of the foregoing act of Congress or this order.

And it is further ordered, that the said marshal or his deputy shall, without delay, make full and particular return in regard to the execution of this order, and of his doings herein, to the judge of the district court of the United States for the northern district of Florida.

And it is further ordered, that this order be entered of record by the clerk of this court, at Appalachicola, and copies furnished without delay to the marshal or his deputy for service.

(Signed) I. H. BRONSON,
*Judge U S. district court, for the northern district of Florida.*

I, Joseph S. May, clerk of the district court of the United States, for the northern district of Florida, in the Appalachicola district, do hereby certify, that the foregoing is a true copy of the original order now on file in my office of said court.

[L. S.] In testimony whereof I hereunto set my hand and affix the seal of said court, this the 28th day of December, 1848.

JOSEPH S. MAY,
*Clerk U. S. district court.*

Defendant having made these facts apparent to the court, contended and stated, in support of his motion aforesaid, that it was manifest to the court that this cause was commenced and came to issue in the district court of the United States, for the district of Appalachicola, sitting as the superior court of Franklin county, in the then Territory of Florida, a court established by the Congress of the United States, and under its jurisdiction and control; and because it does not appear how the said

cause, and the records and papers of the same, were ever legally transferred to this court, or that the same have ever been so transferred, or that the same are not yet legally remaining in the said Territorial court's office, or that the same have not been removed, and said cause been tried or dismissed, or yet remains pending in the district court of the United States; and because the courts established by the Government of the United States have the exclusive right to hear and determine all causes legally commenced in the courts established by said Government, unless the same be prevented by act of Congress, or the consent of the parties; and because, by the act of Congress of 22d February, 1847, entitled "An act to regulate the exercise of the appellate jurisdiction of the Supreme Court of the United States in certain cases, and for other purposes," all the judgments, papers, and records of said superior courts of the Territory of Florida, were transferred to the district court of the United States, and all cases pending in any of the superior courts of said Territory of Florida, on the third day of March, A. D. 1845, and not legally transferred to the said courts of Florida, and which are claimed to have been pending in said courts after said day, were by said act transferred to the district court of the United States, for the district of Florida, afterwards called the northern district of Florida.

And defendant insisted that said act of Congress, proprio vigore, transferred said cause to said court, the same having been pending in said court at said time, and never legally transferred to any State court, and that this court had not then, and never had, jurisdiction to hear and determine said cause so commenced and pending as aforesaid.

And defendant further referred to the law of Florida of the twenty-second day of July, 1845, by which only such causes are attempted or pretended to be transferred from the Territorial superior courts to the circuit courts of the State, as are not cognizable by the federal courts, and contended that this cause was commenced in a "federal court by personal service upon him, and is and hath been at all times since cognizable in a federal court, and never was transferred legally, or cognizable in this court.

And defendant further showed, that, since said act of Congress of 1847 was passed, there had been no judge presiding in this court, who could (as he contended) take any action on this case, under the laws of this State, until the present term. The only judges who had, since the passage of said act of Congress of 1847, presided in this court, having been the honorable Thomas Baltzell and the honorable George S. Hawkins, as was proved by inspection of the record, and both of whom, it appeared by the record, had been attorneys and counsellors in this case, and the same was admitted, and, defendant contended, only had power to continue said causes; and defendant contended that the continuances, before recited as entered in this cause in this court, were null and void, and of no effect, this court never having had possession or jurisdiction of the same at any time.

But said court having heard argument of counsel on said motion,

overruled the same, and gave judgment for the plaintiff; to which opinion and overruling defendant, by counsel, excepts, and prays that this his bill of exceptions may be signed and sealed by the court, which is done.

THO. DOUGLAS, [SEAL.]
*Judge, &c.*

*Fourth bill of exceptions.*

Defendant moves in arrest of judgment in the said case rendered at this term, and shows for cause, (December 28th, 1848,)—

1st. That this court has no jurisdiction to try the said cause, because the records and proceedings therein of right belong to the district court of the United States for the northern district of Florida, holden in the city of Appalachicola, the same being a part of the unfinished business; it being a case pending in the superior court of the Territory of Florida, at and after the third day of March, 1845, of the superior court of the Appalachicola district of Florida, being a territorial court created and continued, by act of Congress, up to the admission of Florida as a State, from which time the said court became defunct, and the proceedings therein abated, until the same were transferred, by act of Congress, passed ——, 1847, to the district court of the United States, for the northern district of Florida.

2d. Because Hon. George S. Hawkins, judge of the western circuit of Florida, was of counsel in this cause—which fact defendant offering to prove, is admitted by plaintiff's counsel; and because the legislature of Florida, at its session holden in January, 1848, made special provision for the time and manner in which the said case should be tried, and also prescribed how the judge should be selected who should try the same; that this case is included in the class of cases about which special legislation has been had; and the trial of said cause at this term by the honorable Thomas Douglas, as presiding judge, who is commissioned only as judge of the eastern circuit, and not of the western circuit, is in direct opposition to the act of January, 1848—in his, that the right to appoint a judge to try causes in which the resident judge is interested, or was of counsel or attorney, is given to the supreme court of the State, and not to the resident judge so interested.

2d. That it does not appear that the requisitions of the law have been complied with by the resident judge, George S. Hawkins, judge of western circuit, he not having made a report of the cases in which he was interested as counsel, of which this is one, to the supreme court to be holden after the passage of said act.

3d. That the cases in which the resident judge is interested as counsel, of which this is one, are postponed for trial until after the session of the supreme court, which does not occur until the first Monday in January next, and those are to be tried at a subsequent term to be designated by the supreme court, when the same should be tried.

4th. That such time has not arrived, such judge has not been appointed, and the said case (which is one of those provided for by the

act of the legislature, approved by the Governor of the State of Florida, January 4th, 1848,) has not been reported by the resident judge to the supreme court of the State, as by said act required. Which motion the court overruled; and to which overruling defendant, by counsel, excepted, and prayed that this his bill of exceptions be signed and sealed by the court, which is done.

THO. DOUGLAS, [SEAL.]
*Judge, &c.*

(Endorsed.) By consent this is made also a bill of exceptions in the case of Roberts, Allen & Co., and shall be copied in that case with this endorsement.

BROCKENBROUGH,
W. G. M. DAVIS.

Afterwards, to wit, on the fourth day of January, one thousand eight hundred and forty-nine, the following bond was filed, to wit:

STATE OF FLORIDA:

Know all men by these presents, that we, Farish Carter, by William H. Long, his attorney in fact, William B. Wynn, Felix H. G. Long, George F. Baltzell, Walter J. Robinson, Benjamin Wynn, are held and firmly bound unto Archibald T. Bennett in the sum of twenty-two thousand dollars; for the payment whereof, well and truly to be made to said Bennett, his heirs, executors, administrators, and assigns, we hereby bind ourselves, our heirs, administrators, and executors, jointly and severally. In witness whereof we have hereunto set our hands and seals this first day of January, 1849.

The condition of this obligation is such, that whereas Farish Carter is about to appeal from a judgment rendered in the circuit court of Franklin county for the sum of twenty thousand dollars and costs, said judgment having been rendered at the fall term, 1848, in which said judgment Archibald T. Bennett is plaintiff, and Farish Carter is defendant; now, then, if the said defendant shall pay the debt, damages, condemnation, and costs, in case the judgment of the circuit court shall be confirmed by the supreme court, then this obligation to be null and void, else to remain in full force and virtue.

FARISH CARTER,
By his attorney in fact, WM. H. LONG, [SEAL.]
WALTER J. ROBINSON, [SEAL.]
WM. B. WYNN, [SEAL.]
FELIX H. G. LONG, [SEAL.]
GEO. F. BALTZELL, [SEAL.]
BENJ. WYNNS. [SEAL.]

Test: EDWARD W. PEYTON, *J. P.*
And filed January 4th, 1849.
Approved January 4th, 1849.

WILLIAM VALLEAU, *Clerk.*

Also, on the fourth day of January, 1849, the following affidavits were filed, viz:

STATE OF FLORIDA,
*Jackson county, sct:*

Before me, Edward W. Peyton, a justice of the peace of said county and State, duly commissioned and qualified, appeared Walter J. Robinson of said circuit, county, and State, well known to me, and whose signature appears to an appeal bond made by the agent of Farish Carter, under power of attorney, to Archibald T. Bennett, in the sum of twenty-two thousand dollars; also a like bond to Roberts, Allen & Co., in the sum of sixteen hundred dollars, as one of the securities; and the said Robinson now here makes oath, that after all his just debts and liabilities are paid and discharged, he is now possessed of real, personal, and mixed property, of the value of five thousand dollars, now in said State and circuit.

WALTER J. ROBINSON.

Sworn to and subscribed before me, this 1st January, 1849.
E. W. PEYTON, [L. S.]
*Justice of the peace.*

STATE OF FLORIDA,
*Jackson county, western circuit, sct:*

Before me, Edward W. Peyton, a justice of the peace of said county and State, duly commissioned and qualified, appeared William B. Wynns, of said circuit, county, and State, well known to me, and whose signature appears to an appeal bond made by the agent of Farish Carter, under power of attorney, to Archibald T. Bennett, in the sum of twenty-two thousand [dollars;] also a like bond to Roberts, Allen & Co., for the sum of sixteen hundred dollars, as one of [the] sureties; and the said Wynn now here makes oath that, after all his just debts and liabilities are paid and discharged, he is now possessed of real, personal, and mixed property, of the value of five thousand dollars, now in said circuit and State.

WM. B. WYNN.

Sworn to and subscribed before me, this 1st January, 1849.
EDWARD W. PEYTON, [L. S.]
*Justice of the peace.*

STATE OF FLORIDA,
*Jackson county, western circuit, sct:*

Before me, Edward W. Peyton, a justice of the peace of said county, duly commissioned and qualified, appeared Felix H. G. Long, of said circuit, and county, and State, well known to me, and whose signature appears to an appeal bond, made by the agent of Farish Carter, under power of attorney, to Archibald T. Bennett, in the sum of twenty-two thousand dollars; also a like bond to Roberts, Allen & Co.,

1970.

for the sum of sixteen hundred dollars, as one of the sureties; and the said Long now here makes oath that, after all his just debts and liabilities are paid and discharged, he is now possessed of real, personal, and mixed property of the value of five thousand dollars, now in said circuit and State.

FELIX H. G. LONG.

Sworn to and subscribed before me, this the 1st January, 1849.

EDWARD W. PEYTON, [L. S.]
*Justice of the peace.*

STATE OF FLORIDA,
*Jackson county, western circuit, sct:*

Before me, Edward W. Peyton, a justice of the peace of said county, duly commissioned and qualified, appeared George F. Baltzell, of said circuit and State, well known to me, and whose signature appears to an appeal bond, made by the agent of Farish Carter, under power of attorney, to Archibald T. Bennett, in the sum of twenty-two thousand dollars; also a like bond to Roberts, Allen & Co., for the sum of sixteen hundred dollars, as one of the sureties; and the said Baltzell now here makes oath that, after all his just debts and liabilities are paid and discharged, he is now possessed of real, personal, and mixed property, of the value of five thousand dollars, now in said circuit and State.

GEO. F. BALTZELL. [SEAL.]

Sworn to and subscribed before me, this the 1st of January, 1849.

EDWARD W. PEYTON, [L. S.]
*Justice of the peace.*

STATE OF FLORIDA,
*Jackson county, western circuit, sct.*

Before me, Edward W. Peyton, a justice of the peace of said county, duly commissioned and qualified, appeared Benjamin Wynns, of said county and State, well known to me, whose signature appears to an appeal bond, made by the agent of Farish Carter, under power of attorney, to Archibald T. Bennett, in the sum of twenty-two thousand dollars; also, a like bond to Roberts, Allen & Co., for the sum of sixteen hundred dollars, as one of the sureties; and the said Benjamin Wynns now here makes oath that, after all his just debts are paid, he is now possessed of real and personal property of the value of ten thousand dollars, now within the jurisdiction of the western circuit court.

BENJ. WYNNS.

Sworn to and subscribed before me, this 2d day of January, 1849.

EDWARD W. PEYTON, [L. S.]
*Justice of the peace.*

Afterwards, to wit, on the eighteenth day of January, one thousand eight hundred and forty-nine, the following power of attorney was filed in the office of the clerk of this court, to wit:

STATE OF GEORGIA, *Muscogee county.*

Know all men by these presents, that I, Farish Carter, of the county of Baldwin, and State aforesaid, for divers good causes and considerations me hereunto moving, have made, ordained, and appointed, and by these presents do make, ordain, and appoint, William H. Long, of the State of Florida, and county of Franklin, my true and lawful attorney, for me and in my name, and for my own proper use and benefit, to appeal, if it should become necessary, in a certain action now depending in the State of Florida, and county of Franklin, in which Archibald T. Bennett is plaintiff, and Farish Carter is defendant, and to have, use, and take all lawful ways and means in my name, or otherwise, that may be found necessary or proper in the execution of this power of attorney, to execute all such bonds in my name as may be necessary and proper for the purposes aforesaid, and to do all other lawful acts and things whatsoever, concerning the premises, as fully in every respect as I myself might or could do were I personally present at the doing thereof; ratifying and confirming, and by these presents allowing, whatsoever my said attorney shall in my name lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In witness whereof I have hereunto set my hand and affixed my seal, this 5th December, 1848.

FARISH CARTER. [L. S.]

Attest:

J. A. L. LEE,
ROBERT B. ALEXANDER,
*Judge S. C. C. C.*

STATE OF GEORGIA, *Muscogee county.*

I, the undersigned, Edward J. Hardin, clerk of the superior court of said county, do hereby certify, that Robert B. Alexander, whose name appears to the foregoing power of attorney, is, and was at the time of signing the same, presiding judge of the superior court of said county, duly commissioned and qualified.

Given under my hand and seal of office, this fifth day of December, [SEAL.] eighteen hundred and forty-eight.

E. J. HARDIN, *Clerk.*

GEORGIA, *Muscogee county.*

Before me, Wylie Williams, commissioner for the State of Georgia, to take acknowledgment of deeds and other instruments to be recorded or used in the State of Florida, duly appointed and commissioned by his excellency the Governor of said State of Florida, personally appeared the within named Farish Carter, who is personally known to me, and acknowledged that he signed, sealed, and delivered the within

power of attorney on the day and year therein specified, to the said William H. Long.

[FLORIDA.] Given under my hand and seal, this the 6th day of December, 1848.

WILEY WILLIAMS, *Commissioner*.

(Endorsed.) Filed 18th January, 1849, and shown to me on the day the appeal bond was filed.

WM. VALLEAU, *Clerk*.

Afterwards, to wit, on the sixteenth day of May, one thousand eight hundred and forty-nine, the following notice was filed in the office of the clerk of this court, to wit:

IN THE NAME OF THE STATE OF FLORIDA,
APPALACHICOLA, *May* 16*th*, 1849.

FRANKIN CIRCUIT COURT, *ss.*

To Mr. Archibald T. Bennett.

Sir: You will take notice that an appeal has been prayed and regularly obtained in the clerk's office of Franklin circuit court, from a judgment and decision obtained by you against me in an action of trover for certain slaves, at last fall term, 1848, of said court, when Hon. Thomas Douglas, a judge commissioned for the eastern circuit of Florida, presided, the same being the only judgment then obtained by you against me; which said appeal is taken to the supreme court of this State, and will be duly and regularly entered and docketed in that court according to law.

Respectfully, your obedient servant,
FARISH CARTER,
By W. H. BROCKENBROUGH,
*His attorney at law*.

(Endorsed.) Served a copy on A. T. Bennett, May 17th, 1849.
JOHN LUCAS, *Sheriff*,
By BENJ. LUCAS, *Deputy*.

STATE OF FLORIDA,
*Franklin county, ss.*

I, William Valleau, clerk of the circuit court in and for said county, do hereby certify, that the foregoing is a true and perfect transcript of the record and proceedings in the case of Archibald T. Bennett against Farish Carter, as the same remains of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court, at the city of Appalachicola, this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and forty-nine.

WILLIAM VALLEAU,
*Clerk Franklin circuit court*.

STATE OF FLORIDA,
*Franklin county.*

I, George S. Hawkins, judge of the circuit court in and for the western circuit of Florida, (in which circuit is situated the said county of Franklin,) and one of the justices of the supreme court of said State, do hereby certify, that William Valleau, whose signature appears to the above certificate, was, at the time of signing the same, and is now, clerk of said court; that full faith and credit is due and ought to be given his acts as such, and that the said certificate is in due form of law.

Given under my hand and seal at Appalachicola, this 25th day of June, A. D. 1849.

GEORGE S. HAWKINS, [L. S.]
*Judge of the western circuit of Florida.*

The State of Florida, to the sheriff of the county of Franklin, greeting:

You are hereby commanded to cite and admonish Archibald T. Bennett, of the county of Franklin, to be and appear before the justices of our supreme court, at the Capitol, in the city of Tallahassee, at a court to be holden on the first Monday in January next, to answer Farish Carter in a certain appeal from the judgment of our circuit court for the western circuit, sitting in and for the county of Franklin, in a certain cause tried at the fall term, 1848, wherein the said Archibald T. Bennett is plaintiff, and the said Farish Carter is defendant; and have then and there before the justices of the supreme court this writ, with your actings and doings thereon.

Witness the honorable Thomas Douglas, chief justice of our said supreme court, this fourth day of December, in the year of our Lord one thousand eight hundred and forty-nine, and the independence of the United States the seventy-fourth year.

SAMUEL W. SPENCER,
*Clerk circuit court of Franklin county.*

SUPREME COURT, FLORIDA.

ARCHIBALD T. BENNETT
vs.
FARISH CARTER. } Trover.

Appeal from Franklin circuit court.

*Assignment of errors.*

I. The court erred in giving judgment for plaintiff below, because the action was brought in December, 1842, in the superior court of Franklin county, Territory of Florida, and in said court continued until the 17th of February, 1845, when it was ordered that this cause be continued by consent of counsel until the next term, whereby it appears that this cause is yet pending in the district court of the United States, for the district of Appalachicola, (a court of Federal cognizance and

jurisdiction,) unless removed by act of Congress to some other court, and the circuit court had no jurisdiction to give judgment in this cause.

II. Because it no where appears by what rule, law, authority, or order, said circuit court obtained jurisdiction to hear and determine said cause so commenced and continued in the said superior court of Franklin county, Territory of Florida; and the record showing that the cause was so commenced in another court and another jurisdiction, it must appear to give validity to the decision of the circuit court, that such cause came into said circuit court lawfully and regularly for decision, and not so appearing, said decision must be reversed.

III. Because the court erred in ruling out the notes offered in evidence by defendant.

IV. And in admitting the plaintiff's depositions of Ephraim W. Johnson and Minor W. Brown.

V. Because the court erred in admitting plaintiff's deposition of Benjamin F. Griffin.

VI. And the deposition of George W. Collier for plaintiff.

VII. And the bonds and affidavits introduced by plaintiff as his rebutting testimony, marked No. 10.

VIII. Because the court erred in excluding defendant's testimony of the clearance of the slaves at the custom-house for New Orleans, and the certificate of Nathan Baker appended thereto, referred to in the testimony of said Baker.

IX. The court erred in refusing to instruct the jury generally upon the points of law arising in the case when called upon by counsel, and its construction of the statute of 1848, upon that subject.

X. The court erred in refusing the first special instruction asked by defendant's counsel.

XI. And in giving the modified instruction in lieu thereof, there being no facts of ignorance, or misapprehension of rights whatever, proved to justify this modification.

XII. And in refusing the 2d special instruction asked by defendant.

XIII. And in the addition or qualification made to defendant's 3d special instruction asked, there being no evidence to justify such addition.

XIV. And in adding the qualification ("or other consideration given,") to defendant's 5th instruction, there being no evidence to authorize it, and the bills of sale purporting to be for money.

XV. The court erred in refusing defendant's 9th instruction.

XVI. And his 13th instruction.

XVII. And in adding the qualification, in brackets, to defendant's 14th instruction, to wit: "Such person being cognizant of the fraud at the time of his purchase," and in refusing to give such instruction as asked without qualification.

XVIII. And in refusing the 16th instruction of defendant as asked, and adding the qualification, "provided he is served with legal notice, either personally or by advertisement"—the same being unnecessary under the statute, and the qualification calculated to mislead.

XIX. The court erred in refusing to give the 3d clause of defendant's 18th instruction.

XX. And in refusing his motion for a new trial.

XXI. The court erred in refusing to arrest the judgment and dismiss the cause, and order the clerk to transfer the papers to the district court of the United States.

XXII. And in not arresting the judgment for reasons assigned in defendant's 4th bill of exceptions.

XXIII. That Thomas Douglass, who rendered the judgment, committed error in so doing, in this, that he was elected and commissioned as judge of the eastern circuit, and George S. Hawkins was elected and commissioned as judge of the western circuit, and Franklin county is in said western circuit, and said Hawkins had been of counsel in this cause, and in such case said Hawkins had no power to preside himself, or to select the judge who should preside in his place at the trial of this cause; but it was provided by the act of January 4th, 1848, that the selection of the judge, who should try such causes, should be vested in the supreme court of the State, whose duty it is made in such case to assign one of the judges thereof, not interested, or otherwise disqualified to try such cause, and said Thomas [Douglas] had not been so selected or assigned, but only claimed to sit as by request of said Hawkins.

XXIV. That said Douglas erred in entering judgment upon said verdict, the same being illegal, having been rendered by twelve men not authorized by law, and without the presence of the judge of said court, George S. Hawkins, during the trial of said cause.

XXV. That the court erred in rendering judgment, because the verdict is general, for the plaintiff on the issue, for more than the whole amount of damages claimed, when plaintiff in open court admitted the recapture of certain of the slaves, to wit:

amounting to the aggregage value of $ , and abandoned his action as to them; and yet the verdict finds for plaintiff for all, and makes no distinction.

XXVI. The court erred in rendering judgment upon the verdict, which is for more than the aggregate of all the values in the declaration alleged, for all the slaves not recaptured and abandoned in this action; and there is no count or claim in the declaration for any further amount than such value; no claim for interest or hire, and as to that, no issue or litigation, no suit.

XXVII. The judgment should be reversed, because it appears by the record that the court had no jurisdiction of the cause; the judge no commission to try the cause if that court had had jurisdiction; and the judgment is for an amount and for property not in litigation between the parties.

XXVIII. The court erred in not dismissing the action, when it was shown by plaintiff's affidavit in a court of record, and corroborated by

other testimony, that the action was based upon, and intended to sustain, a fraud and felony.

BROCKENBROUGH,
*For appellant.*

And afterwards, to wit, on the 20th day of December, A. D. 1849, a citation was filed in said clerk's office of the supreme court, in the words following:

The State of Florida, to the sheriff of the county of Franklin, greeting:

You are hereby commanded to cite and admonish Archibald T. Bennett, of the county of Franklin, to be and appear before the justices of our supreme court, at the Capitol, in the city of Tallahassee, at a court to be holden on the first Monday in January next, to answer Farish Carter in a certain appeal from the judgment of our circuit court for the western circuit, sitting in and for the county of Franklin, in a certain cause tried at the fall term, 1848, wherein the said Archibald T. Bennett is plaintiff, and the said Farish Carter is defendant, and have then and there, before the justices of the supreme court, this writ, with your actings and doings therein.

Witness the honorable Thomas Douglass, chief justice of our said supreme court, this fourth day of December, in the year of [SEAL.] our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-fourth year.

SAMUEL W. SPENCER,
*Clerk of circuit court of Franklin county.*

Endorsed as follows:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

Citation supreme court.

Filed December 20, 1849.

R. S. HAYWARD, *Clerk.*

Served copy of this citation personally upon Archibald T. Bennett this fourth December, 1849.

BENJ. LUCAS, *Sheriff.*

And afterwards, to wit, on Monday, the seventh day of January, in the year of our Lord one thousand eight hundred and fifty, at a supreme court begun and held at Tallahassee aforesaid, in the State of Florida, the following entry was made of record, viz:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

Ordered by the court, that the above cause be continued until the next term of this court.

And afterwards, to wit, on the thirtieth day of January, A. D. 1851, at a supreme court continued and held at Tallahassee, in the State of Florida:

Present, honorable Walker Anderson, chief justice; honorable Leslie A. Thompson [and] Albert G. Semmes, associates; the following entry was made of record, viz:

Ordered, That in the case of Farish Carter, appellant, vs. Archibald T. Bennett, appellee, the attendance of honorable J. Wales Baker, judge of the middle circuit, and honorable Joseph B. Lancaster, judge of the southern circuit, be requested to sit in the place of Justice Thompson and Semmes.

And afterwards, to wit, on Tuesday, the fourth day of February, A. D. 1851, at a supreme court continued and held at Tallahassee, in the State of Florida:

Present, honorable Walker Anderson, chief justice; honorable Leslie A. Thompson [and] honorable Albert G. Semmes, associates; honorable Thomas Douglass, judge of eastern circuit; honorable Joseph B. Lancaster, judge of southern circuit; [and] J. Wayles Baker, judge of middle circuit, the following entry was made of record, viz:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

Ordered, That this cause be set for hearing on the fourth Monday in July next, Chief Justice Anderson, honorable Joseph B. Lancaster, judge of the southern circuit, and honorable J. Wayles Baker, judge of the middle circuit, presiding.

And afterwards, to wit, on the twenty-ninth day of July, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee:

Present, honorable Walker Anderson, chief justice; honorable Joseph B. Lancaster, judge of southern circuit; [and] honorable J. Wayles Baker, judge of middle circuit, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day partly heard upon the transcript of the record of the judgment aforesaid, and the argument of counsel, and is continued until to-morrow morning for further hearing.

And afterwards, to wit, on the thirtieth day of July, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee:

Hon. Walker Anderson, chief justice; Joseph B. Lancaster, judge of southern circuit; J. Wayles Baker, judge of middle circuit, presiding, the following entry was made of record:

1974.

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day further heard, upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, and is continued until to-morrow morning for further hearing.

And afterwards, to wit, on the thirty-first day of July, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, the

Hon. Walker Anderson, C. J., Joseph B. Lancaster, judge of S. C., J. Wayles Baker, judge of M. C., presiding, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day further heard, upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, and is continued until to-morrow morning for further hearing.

And afterwards, to wit, on the first day of August, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, the

Hon. Walker Anderson, C. J., Joseph B. Lancaster, judge of S. C., J. Wayles Baker, judge of M. C., presiding, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day further heard, upon the transcript of the record of the judgment aforesaid, and the arguments of the counsel, and is continued until to-morrow morning for further hearing.

And afterwards, to wit, on the second day of August, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, the

Hon. Walker Anderson, C. J., Joseph B. Lancaster, judge of S. C. J. Wayles Baker, judge of M. C., presiding, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day further heard, upon the transcript of the record of the judgment aforesaid, and the arguments of the counsel, and is continued until Monday morning for further hearing.

And afterwards, to wit, on the fourth day of August, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, the

Hon. Walker Anderson, chief justice; honorable Joseph B. Lancaster, judge of S. C.; honorable J. Wayles Baker, judge of M. C., presiding, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day further heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, and is continued until to-morrow morning for further hearing.

And afterwards, to wit, on the fifth day of August, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, the

Hon. Walker Anderson, chief justice; honorable Joseph B. Lancaster, judge of S. C.; honorable J. Wayles Baker, judge of M. C., presiding, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day further heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, and is continued until to-morrow morning for further hearing.

And afterwards, to wit, on the sixth day of August, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, the

Hon. Walker Anderson, chief justice; honorable Joseph B. Lancaster, judge of S. C.; honorable J. Wayles Baker, judge of M. C., presiding, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day further heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, and is continued until to-morrow morning for further hearing.

And afterwards, to wit, on the seventh day of August, A. D. 1851, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, the

Hon. Walker Anderson, chief justice; honorable Joseph B. Lancaster, judge of S. circuit; honorable J. Wayles Baker, judge of M. circuit, presiding, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

This cause was this day fully heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel; but because

the court is not yet fully advised of its judgment to be given in the premises, it is ordered that the following entry be made:

In this case some of the questions involved possess an interest far beyond the particular parties on the record. The decision on the question of jurisdiction, and also that in relation to new trials, obviously involves consequences extending to many interests supposed to have been adjusted, and to the establishment of a principle of practice of vast importance.

Under this view of the importance of this case the court are disposed to give to its consideration the time and labor which it demands at their hands. And the circumstances under which we have now met are so unfavorable to extended and patient inquiry, that we deem it a proper occasion for taking further time, and holding the case under advisement. The very great ability and research manifested by counsel, while they will essentially aid the court in the proper investigation of the cause, are opposed to a hasty consideration of it, for the briefs now before the court require much time to study them, and are deemed by the court too valuable to be overlooked.

Though the delay of the judgment of the court may be of some inconvenience to the parties, yet the court has manifested by its present session so much willingness to avoid this delay, that they do not apprehend any complaint from them, while the general interests of the people of the State seem to demand this delay for study and deliberation at our hands. The case, therefore, will be held under advisement, and continued to the next January term of this court.

And afterwards, to wit, on the twenty-sixth day of January, A. D. 1852, at a supreme court for the State of Florida, continued and held at the Capitol, in the city of Tallahassee, the

Hon. Walker Anderson, chief justice; honorable Leslie H. Thompson, [and] honorable Albert G. Semmes, associates, presiding, the following entry was made of record:

FARISH CARTER, appellant,
vs.
ARCHIBALD T. BENNETT, appellee.

Upon appeal from a judgment of the circuit court of the western circuit, in and for the county of Franklin, rendered on the 21st day of December, 1848, whereby it was considered that the said appellee do recover of the appellant the sum of $19,999 66, and also his costs, &c.

This day came the parties, by their attorneys, and the transcript of the record of the judgment aforesaid being seen and inspected, and said parties fully heard by counsel, it seems to the court here that there is no error in said judgment; therefore it is considered by the court that the said judgment be affirmed, and that the appellee recover against the appellant his costs by him about his defence in this behalf expended.

Mem.—Judges Lancaster, of the southern circuit, and Baker, of the middle circuit, sat with the chief justice, in the decision of this case,

in the place of Thompson and Semmes, *J.* Js., who had been of counsel in the cause.

And afterwards, to wit, on the 30th day of January, A. D. 1852, the said Farish Carter, plaintiff in error, by his attorney, filed in the clerk's office aforesaid, a copy of the writ of error from the Supreme Court of the United States to the supreme court of Florida, with endorsement thereon; which said copy and endorsement are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the chief justice and associate justices of the supreme court of the State of Florida, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment in a plea which is in the said court before you, between Farish Carter, appellant, and Archibald T. Bennett, appellee, a manifest error hath happened, to the great damage of the said Farish Carter, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 29th day of January, [Seal of office.] in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the 76th year.

GEORGE W. HUTCHINS,
*Clerk of the district court U. S., for the northern district of Florida, having the jurisdiction of a circuit court of the United States.*

Endorsed as follows:

CARTER vs. BENNETT. } Filed this 30th day of January, 1852.
J. P. K. SAVAGE, *Clerk.*

FARISH CARTER, plaintiff in error,
vs.
ARCHIBALD T. BENNETT, defendant in error.

On writ of error to Supreme Court of United States.

Copy of a writ of error, lodged in pursuance of the statute of the

1976.

United States in such case made and *and* provided, for the above named Archibald T. Bennett, defendant in error.

JAMES F. ARCHER,
*Attorney for the plaintiff in error.*

30th of January, A. D. 1852.

And afterwards, to wit, on the third day of February, A. D. 1852, the said Farish Carter, plaintiff in error, by his attorney, filed in the clerk's office of the supreme court of the State of Florida a bond and letter of attorney, which are in the words and figures following, to wit:

Supreme Court of the United States.

FARISH CARTER
vs. } In error.
ARCHIBALD T. BENNETT.

Know all men by these presents, that we, Farish Carter, Felix H. G. Long, Benjamin Wynns, Jesse Coe, Jesse Robinson, A. A. Fisher, and Wm. H. Long, are held and firmly bound unto the above named Archibald T. Bennett, in the sum of fifty thousand dollars, to be paid to the said Archibald T. Bennett, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 2d day of February, A. D. 1852.

Whereas the above named Farish Carter hath presented a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the supreme court of the State of Florida, now, therefore, the condition of this obligation is such, that if the above named Farish Carter shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise in full force and virtue.

FARISH CARTER, [SEAL.]
By his attorney, W. H. LONG,
FELIX H. G. LONG, [SEAL.]
BENJ. WYNNS, [SEAL.]
JESSE COE, [SEAL.]
JESSE ROBINSON, [SEAL.]
A. A. FISHER, [SEAL.]
W. H. LONG, [SEAL.]
FARISH CARTER,
By his agent, CHARLES J. McDONALD. [L. S.]

Sealed and delivered, in presence of—
P. W. WHITE.

This bond is approved as good and sufficient.
WALKER ANDERSON, *C. J. S. C.*
*February 5th*, 1852.

STATE OF FLORIDA, *Jackson county*.

Before the subscriber, a notary public for the county aforesaid, personally appeared Felix H. G. Long, one of the signers of the foregoing bond, who being sworn deposeth and saith, that he is worth at least the sum of five thousand dollars, in visible property, over and above his debts.

FELIX H. G. LONG.

Sworn to and subscribed 2d February, 1852.

A. H. BUSH, *Notary Public.*

STATE OF FLORIDA, *Jackson county*.

Before the subscriber, a notary public for the county aforesaid, Benjamin Wynns, one of the signers of the foregoing bond, who being sworn deposeth and saith, that he is worth at least the sum of ten thousand dollars, over and above his debts.

BENJ. WYNNS.

Sworn to and subscribed 2d February, 1852.

A. H. BUSH, *Notary Public.*

STATE OF FLORIDA, *Jackson county*.

Before the subscriber, a notary public for the county aforesaid, personally appeared Jesse Coe, one of the signers of the foregoing bond, who being sworn deposeth and saith, that he is worth at least the sum of twenty thousand dollars, over and above his debts.

JESSE COE.

Sworn to and subscribed 2d February, 1852.

A. H. BUSH, *Notary Public.*

STATE OF FLORIDA, *county of Jackson*.

Before the subscriber, a justice of the peace for the county aforesaid, personally appeared Jesse Robinson, who being sworn deposeth and saith, that he is worth at least ten thousand dollars over and above his debts.

JESSE ROBINSON.

Sworn to and subscribed before me this 2d of February, A. D. 1852.

W. H. BOWERS,
*Justice of the peace.*

STATE OF FLORIDA, *county of Leon*.

Before the subscriber, a notary public in and for the county aforesaid, personally appeared William H. Long, who being duly sworn deposeth and saith, that he is worth at least the sum of five thousand dollars over and above his liabilities.

WM. H. LONG.

Sworn to and subscribed this 4th day of February, A. D. 1852.

G. W. HUTCHINS,
*Notary Public.*

STATE OF FLORIDA, *county of Leon.*

Before me, the subscriber, a notary public in and for the county aforesaid, personally appeared Alfred A. Fisher, who being duly sworn deposeth and saith, that he is worth at least the sum of ten thousand dollars over and above his liabilities.

A. A. FISHER.

Sworn to and subscribed this 4th day of February, A. D. 1852.

GEO. W. HUTCHINS,
*Notary Public.*

GEORGIA, *Baldwin county.*

Know all men by these presents, that I, Farish Carter, of the county of Baldwin and State aforesaid, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, Charles J. McDonald, of the county of Cobb, and State aforesaid, sufficient considerations me hereunto moving, my true and lawful agent, for me and in my name, to enter an appeal to the Supreme Court of the United States, or carry to the Supreme Court of the United States, by writ of error or otherwise, as my attorney may consider best and most advisable, a certain cause, lately pending on appeal in the supreme court of the State of Florida, appealed from the circuit court of the county of Franklin, in said State of Florida, it being an action of trover, wherein Archibald T. Bennett was plaintiff, and I, the said Farish Carter, was defendant; and for me and in my name to pay all costs, and sign and seal all bonds and other instruments of writing, recognisances, or other thing necessary to effect the premises; and all other matters and things to do, for me and in my name, necessary to effect the premises. And I moreover give to my said attorney full power and authority, for me and in my name, to do and execute all other matters and things for the purpose of carrying to the Supreme Court of the United States any cause now pending, or lately pending, in the supreme court of the State of Florida, or in any court of the State of Florida, wherein the said Archibald T. Bennett is or was plaintiff or defendant, and I, the said Farish Carter, am or was defendant; and for me and in my name to institute, or cause to be instituted, in any of the courts in the State of Florida, either of the United States or of the State, any suit or suits against the said Archibald T. Bennett, or other persons, for the recovery of property, or damages for the conversion of the same, mentioned and described in a mortgage executed by Warren Jordan, at the time of the execution of the same of the county of Hall and the State of Georgia, to the Georgia Railroad and Banking Company, of the State of Georgia, and assigned by the said the Georgia Railroad and Banking Company to the said Farish Carter; and to do all acts of whatever kind, for me and in my name, for effecting the premises; and one or more attorneys under him to appoint, with full and ample power to do and execute, for me and in my name, any or all the matters and things herein

mentioned and set forth, in full and ample manner, as I myself could do were I personally present, hereby ratifying and confirming all acts of my said agents or attorneys, necessary to effect the premises.

In witness whereof I have hereunto set my hand and seal, this thirty-first day of January, in the year of our Lord eighteen hundred and fifty-two.

FARISH CARTER. [L. S.]

Signed, sealed, and delivered in the presence of—
JOHN H. FURMAN.

STATE OF GEORGIA,
*Baldwin county.*

Before me, Augustus H. Hansell, judge of the superior court of the southern district of said State, duly commissioned and sworn, this day personally appeared Farish Carter, of said State and county, who acknowledged the foregoing power of attorney to be his act and deed; and that he signed, sealed, and delivered the same to Charles J. McDonald for the purposes therein specified.

In testimony whereof I have hereunto set my hand and official signature, this thirty-first day of January, eighteen hundred and fifty-two. A. D. 1852.

AUGUSTUS H. HANSELL, [L. S.]
*Judge sup. cts., so. dist. of Ga.*

Endorsed as follows:

FARISH CARTER
vs.
ARCHIBALD T. BENNETT.

*Bond.*

Filed this 3d day of February, A. D. 1852.
J. P. K. SAVAGE, *Clerk.*

STATE OF GEORGIA.

By his excellency, Howell Cobb, governor of said State, to all to whom these presents shall come.

Know ye, that Augustus H. Hansell, whose official signature appears to the within instrument, was, at the time of affixing the same thereto, the judge of the superior court in and for the southern district of the State of Georgia, which appears from the records of file in this office, and that the same is in due form of law; therefore all due faith, credit, and authority are and ought to be had and given to his attestation as such.

In testimony whereof I have hereunto set my hand, and caused the great seal of the State to be put and affixed.

Done at the Capitol, in Milledgeville, this thirty-first day of January, in the year of our Lord eighteen hundred and fifty-two, and of the independence of the United States of America the seventy-sixth.

HOWELL COBB,
N. C. BARNETT,
*Secretary of State.*

Executive Department, Georgia,
Milledgeville, January 31st, 1852.

ARTHUR HOOD,
*Secretary Executive Department.*

Received one $\frac{50}{100}$ dollar.

W. R. MITCHELL, *Tr.*

Entered.

E. S. CANDLER,
*Comp. Gen'l.*

Registered.—Received twenty-five cents.

ARTHUR HOOD,
January 31st. *S. E. D.*

STATE OF FLORIDA.

I, John P. K. Savage, clerk of the supreme court of the State of Florida, do hereby certify, that the foregoing two hundred and twenty-nine pages of print and manuscript, together with the first unnumbered page, contain a true and correct transcript of the record of the proceedings and judgment in a certain cause lately depending in the said supreme court, wherein Farish Carter was appellant, and Archibald T. Bennett was appellee, on appeal from the judgment of the circuit court of the western circuit, State of Florida, in and for Franklin county, rendered in an action of trover, wherein said Archibald T. Bennett was plaintiff, and said Farish Carter was defendant, as fully as the same is made to appear upon the record and files of my said office.

Witness my hand and the seal of the supreme court afore-
[L. S.] said, at Tallahassee, this day of A. D. 1852.
JOHN P. K. SAVAGE, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the chief justice and associate justices of the supreme court of the State of Florida, greeting.

Because, in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said court before you, between Farish Carter, appellant, and Archibald T. Bennett, appellee, a manifest error hath happened, to the great damage of the said Farish Carter, as by his complaint appears, and it being fit that the error, if any